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APPENDIX TO THE JOURNALS  
OF THE  
SENATE AND ASSEMBLY

OF THE  
TWENTY-SEVENTH SESSION  
OF THE  
LEGISLATURE OF THE STATE OF CALIFORNIA.

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# PENOLOGY.

## REPORT

OF THE

## CALIFORNIA STATE PENOLOGICAL COMMISSION.

In compliance with Senate Concurrent Resolution No. 5, passed  
February 16, 1885.

W. C. HENDRICKS, President.

ROBT. T. DEVLIN, Secretary.

### COMMISSIONERS:

W. C. HENDRICKS, President,	OROVILLE.
ROBT. T. DEVLIN, Secretary,	SACRAMENTO.
JOHN BOGGS,	PRINCETON.
CHAS. SONNTAG,	SAN FRANCISCO.
JAS. H. WILKINS,	SAN RAFAEL.



SACRAMENTO:

STATE OFFICE : : : : P. L. SHOAFF, SUPT. STATE PRINTING.  
1887.



*To his Excellency* GEORGE STONEMAN, *Governor of California:*

The Penological Commission have the honor, in accordance with Senate Concurrent Resolution No. 5, passed February 16, 1885, to submit to you the following report.

# PENOLOGY.

## CHAPTER I.

### INTRODUCTORY CHAPTER.

- SEC. 1. Resolution providing for appointment of Commission.
- SEC. 2. Appointment of Commission.
- SEC. 3. Importance of subject.
- SEC. 4. Increase in crime.
- SEC. 5. Cost of the criminal class.
- SEC. 6. Same subject.
- SEC. 7. Subject continued.
- SEC. 8. Work of the Commission.
- SEC. 9. Division of the subject.

#### SEC. 1. RESOLUTION PROVIDING FOR APPOINTMENT OF COMMISSION.

At the last session of the Legislature of this State a concurrent resolution was adopted on the sixteenth day of February, 1885, and in the words and figures following:

Senate Concurrent Resolution No. 5, relative to directing the Governor to appoint a committee of five citizens to inquire into the subject of penology as applicable to the condition of prison affairs within this State.

*Resolved by the Legislature of the State of California, the Senate and Assembly concurring, as follows:*

WHEREAS, The criminal element in the State of California is increasing; and whereas, measures should be taken to reform youthful criminals and to properly care for discharged prisoners; and whereas, owing to the short time the Legislature of this State is in session it is impossible to enact such laws as shall do full and complete justice to the subject-matter; therefore be it

*Resolved,* That the Governor of this State is directed to appoint a Commission of five citizens of this State, who shall inquire into the subject of penology as applicable to the condition of prison affairs within this State, and report to the Governor before the meeting of the next Legislature such suggestions and recommendations as shall enable the Legislature to enact such laws as shall remedy existing evils, improve present conditions, and reform and aid the criminal; *provided,* that the State of California shall in no manner be chargeable with the expenses incurred by said Commission, except such expenses as may be incurred in the employment of a Secretary.

#### SEC. 2. APPOINTMENT OF COMMISSIONERS.

In compliance with such concurrent resolution the undersigned were, on the twenty-sixth day of October, 1885, appointed by your Excellency as such Commission, and immediately afterwards organized by electing W. C. Hendricks President and Robert T. Devlin Secretary.

#### SEC. 3. IMPORTANCE OF SUBJECT.

The Commission were fully convinced of the importance of the subject, the study of which they had undertaken. The alarming increase in the

number of criminals in California is and has been such as to arrest the attention of every one who has devoted even a passing thought to prison matters. We have in California nearly two thousand criminals incarcerated in our State Prisons, a number unduly large in proportion to our comparatively small population. In the Eastern States and in European countries the subject of prison management and prevention of crime has for many years received a vast amount of public and governmental attention. Volumes have been written by men who have given their lives to this study, and in the thickly populated countries, where crime and poverty grow like twin children, almost inseparable companions, the safety of society has required that the State should put forth the most strenuous endeavors to prevent the wavering from passing the boundary line that divides virtue from vice, and should endeavor to reclaim those who had not become completely hardened in crime.

In California, prior to the appointment of the present Commission, little has been done by the State, save in a desultory way, to treat the subject of penology in the manner its importance deserves. Each State has its own peculiar conditions of climate, topography, and population. What might be successful in one State might prove a disastrous failure in another. We have always had this truth in mind in considering the various topics connected with our labors. We have endeavored to study and master them all; then to cull the practicable and discard the impracticable, always endeavoring to lean to the side of the plans most adapted to the peculiar conditions of our State.

#### SEC. 4. INCREASE IN CRIME.

Mr. Frederick Howard Wines, the Secretary of the Illinois State Board of Charities, who is a recognized authority on prison matters, says:

The increase of crime in the United States, in proportion to the population, is a demonstration of the failure of existing methods of dealing with it, and must arrest the attention of thoughtful and honest men. No single answer to the question, What is to be done? will cover all that should be done, in the way of preventive measures, the more vigorous prosecution of criminals, and the improvement of morals in the community at large.

#### SEC. 5. COST OF THE CRIMINAL CLASS.

The cost to the State of its criminal class is well shown in the revised report of the Assembly Committee on Prisons of this State, made in 1881 by Hon. Chancellor Hartson, Chairman of the committee. Says the report:

Sixteen millions is the approximated cost of the 45 State Prisons in the United States. The cost of the jails, penitentiaries, and reformatories in the United States is supposed to be much greater.

The number of officers and employes in the 45 prisons is about fifteen hundred. The aggregate annual salaries paid them amount to \$1,015,000. The total annual costs of the State Prisons for ordinary current expenses, including salaries of officials, amounts to about \$3,000,000. The aggregate annual earnings from all of these prisons amounts to about \$1,500,000.

I insert the following interesting and startling statement of the history and progress of pauperism and crime, taken from the *Montreal Weekly Witness*:

The rapidly augmenting cost of caring for the indigent and criminal classes in the United States is causing some degree of alarm among political economists, for should the annual increase in the cost of supporting these classes continue for thirty years to come, in the same ratio as in the past thirty years, it will exceed the cost of maintaining the army and navy. In 1850, with a population of 23,191,876, it cost yearly \$2,954,806, public funds, to support the poor and criminal classes. In 1860, the population had increased to 31,443,321, but the annual cost of maintaining parasitic population had increased to \$5,445,153, which sum had increased to \$10,930,429 in 1870, while the whole population numbered 38,558,374 souls. It is now estimated that when the census tables are computed

for 1880, the annual expenses incurred in maintaining these classes will amount to \$20,000,000, or 40 cents per head of the entire population, while in 1850 the annual cost was but 12½ cents to each inhabitant. The population has been doubled in the past thirty years, but the cost of supporting the wicked and infirm portion of it has increased nearly sevenfold. The immense extent of unoccupied fertile lands in the Western States has hitherto acted as a kind of safety-valve to draw away and absorb large numbers of persons who would otherwise have become burdensome to the public, either as paupers or criminals. It is probable that within ten or a dozen years all the valuable agricultural lands will have passed out of the possession of the Government of the United States, and no more free homesteads will remain to tempt people from a life of vice or indolence. When this takes place there will probably be a greater ratio in the increase in these classes than in the past thirty years, so that in thirty years more, or in 1910, their support will cost \$140,000,000 annually, or about \$1 25 for each head of population within the territory of the United States at that time. And this estimate omits the enormous cost of arrest and criminal trials engaging the time and attention of Judges, prosecuting officers, juries, Sheriffs, and other executive and judicial officers who administer criminal law in some of its forms or processes.

#### SEC. 6. SAME SUBJECT.

In the same strain an Eastern writer, speaking of the cost and results of our penal system, says:

There are the thousands of regular policemen in our cities—the thousands of special policemen—the thousands of so called detectives, both public and private. Then there are in the neighborhood of 50,000 constables in this country, and about as many magistrates. Then there are nearly 2,200 Sheriffs, and perhaps 10,000 Deputy Sheriffs. Then come grand juries—for most of the States still retain this system—meeting on an average of three times a year, and composed usually of 18 men each; then the petit juries for about 2,200 counties, meeting as often as the grand juries, and including talesmen composed of about the same number of men; then, lawyers for the State; next, Judges for the trial and appellate Courts, clerks for these Courts, keepers for police stations, keepers for about 2,200 jails, keepers for all of the penitentiaries, to say nothing about witnesses for the State and defense. In all these you behold a vast multitude of men, numbering nearly a million, all forming a part of this machinery, many giving it all their time, some getting salaries, and others relying on the fees they can collect from those arrested, actually getting their living, or trying to get it, out of the shortcomings and transgressions of their fellow-men.

So much for a glance at the size of this machinery.

Turning for a moment from the size to the "cost of the thing," we find that the sums expended are more than any man can count. It is impossible to estimate the amount now actually invested in prison buildings and equipments throughout the land. There are nearly 50 large penitentiaries supplied with workshops, machinery, etc. Then there are nearly 2,200 jails, besides numerous police prisons. Perhaps \$400,000,000 would be a low estimate of the cost of all these improvements. This is all dead capital. Nobody thinks of getting any return on it—even in those prisons that are said to be self-supporting; nobody thinks of paying interest on the investment. Placed at 5 per cent, the interest on this sum alone would be \$20,000,000 per annum.

The above sinks into insignificance when compared with the yearly expenses. While a few of the penitentiaries have for short intervals been "self-supporting," the most of them have to apply annually to the Legislature for large appropriations. Then the expense of keeping up the jails and smaller prisons and the police force may be called a dead loss.

In 1880 the average cost in Illinois of every prisoner in jail, including expense of arrest, etc., was about \$27. Assuming this to be a fair average, it would make \$4,087,800 as the total expense for jail prisoners for a year, on the present basis of population.

For the year 1882 the expense of the Police Department of Chicago was a little over \$800,000, making an average of about \$24 for each of the 32,800 arrests. As the Police Department of Chicago is run as economically and the force is as effective and well managed as any in the land, this is a low average; and yet if this sum is multiplied by the total arrests throughout the land, it would make \$36,000,000 annually as the amount paid by the Government for arrests simply, to which most of the jail expenses, the costs of prosecution and of confinement in the larger prisons must yet be added.

These sums are large, and yet they represent only a part of the expense. They approximate only the amounts paid directly in the shape of taxes; they do not include the large sums paid as costs by those convicted, nor do they include the larger sums expended in various other ways in connection with our criminal procedure.

#### SEC. 7. SUBJECT CONTINUED.

Such is the size and cost which a mere glance at our penal machinery reveals. It is immense; it is costly, and its victims are counted by millions. Surely, one would suppose that in this country crime was repressed; that life and property were protected. And as the terrors of the law are scattered so profusely in the shape of numerous arrests,

one would suppose that the hardened criminal was perfectly restrained and the young were deterred from the paths of crime.

But, strange to say, quite the opposite seems to be the case. The young are not deterred, nor are the vicious repressed. Revolting crimes are of most frequent occurrence in all parts of the land, and the feeling is spreading that somehow or other our penal system does not protect society. In short, it does not seem to be a success. It does not deter the young offender, and it seems not to reform nor restrain the old offender.

This being so, one is naturally led to ask whether there is not something wrong with the system; whether it is not based on a mistaken principle; whether it is not a great mill, which, somehow or other, supplies its own grist, a maelstrom which draws from the outside and then keeps its victims moving in a circle until swallowed in the vortex.

#### SEC. 8. WORK OF THE COMMISSION.

The Commission has held meetings at least once a month, and sometimes has convened two or three times, for the transaction of its business. Among one of the first things it did was to commission the President, Mr. Hendricks, to make a careful and full investigation of the best features adopted by the various prisons in the Eastern States and to obtain the opinions of prominent people on prison management. This examination covered a period of over two months and a half. Mr. Devlin, the Secretary, has been constantly engaged in sending letters of inquiry to persons in the East and in Europe for information, opinions, and documents, and in the preparation of this report of the Commission. Several of the replies received to these inquiries are appended to this report. The Commission, in addition to these meetings for the transaction of business and consideration of penological matters, has held two public meetings to which all were invited. The first was held in the Supreme Court-room of the State Capital at Sacramento, on July 8 and 9, 1886. The second was held in the parlors of the Palace Hotel, San Francisco, September 30, 1886. At this meeting President Hendricks submitted a report of his tour of inspection and inquiry, which was of great assistance to the Commission, and which the Commission gave him permission to have published separately.

#### SEC. 9. DIVISION OF THE SUBJECT.

The subject of penology is naturally and logically divisible into three different heads: 1. The preventive stage. 2. The incarceration stage. 3. The after-discharge stage. Under the first subdivision may be properly considered all matters relating to the care of abandoned and dependent children, and the reformation of juvenile offenders. In this connection the language of Dr. Channing, occurring in a discourse delivered in 1841, is peculiarly pertinent:

Society has hitherto employed its energy chiefly to punish crime. It is infinitely more important to prevent it, and this I say, not for the sake of those alone on whom the criminal preys. I do not think only or chiefly of those who suffer from crime. I plead also, and plead more, for those who perpetrate it. In moments of clear, calm thought, I feel more for the wrong-doer than for him who is wronged. In a case of theft, incomparably the most wretched man is he who steals, not he who is robbed. The innocent are not undone by the acts of violence or fraud which they suffer. They are innocent though injured. They do not bear the brand of infamous crime—and no language can express the import of this distinction. What I want is, not merely that society shall protect itself against crime, but that it shall do all that it can to preserve its exposed members from crime, and so to do for the sake of those members as for its own. It ought not to breed monsters in its own bosom. If it will not use its prosperity to save the ignorant and the poor from the blackest vice, then it must suffer, and deserves to suffer from crime. If the child be left to grow up in utter ignorance of duty, of its Maker, of its relations to society, and to grow up in an atmosphere of profaneness and intemperance, and in the practice of falsehood and fraud, let not the community complain of its crime. It has quietly looked on and seen him, year after year, arming himself against its order and peace, and who is most to blame when he deals the guilty blow? A moral care over the tempted and ignorant portion of the State is a primary duty of society.

## CHAPTER II.

### CARE OF ABANDONED, DEPENDENT, AND NEGLECTED CHILDREN.

- SEC. 10. Care of juveniles.
- SEC. 11. Dependent children.
- SEC. 12. Number of children.
- SEC. 13. Progress in New York.
- SEC. 14. Subject continued.
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- SEC. 28. Visited by member of Commission.
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#### SEC. 10. CARE OF JUVENILES.

In this country, and particularly in California, our attention has been devoted principally to the incarceration of those convicted of crime. Without mentioning the various efforts made in different countries of Europe with respect to the saving of children from crime, it will be sufficient to say that this subject has for over a century engrossed the attention of the best thinkers. One of these societies, organized in England in 1815, named the "Society for the Improvement of Prison Discipline, and for the Reformation of Juvenile Offenders," acted on the idea that "youth nurtured in guilt would never become in manhood respectable members of society." The society found that the causes for the large amount of juvenile criminality that prevailed in London were: want of employment and dislike of work; homelessness; want of mental, moral, and religious training; parental neglect; destitution; flash houses of drink and debauchery. In 1835 a Parliamentary Committee obtained a great deal of evidence in the several reformatory institutions existing in England, and recommended that reformatories should be added to the prison system of that country. In 1882 there were in Great Britain sixty-one reformatory schools and one hundred and thirty-eight industrial schools. In a report made by the Royal Commissioners on Reformatory Schools it is said as to the reduction of crime in England:

The effect of the system of certified schools established by these enactments has been on the whole very satisfactory. They are credited, we believe, justly, with having broken up the gangs of young criminals in the larger towns, with putting an end to the training of boys as professional thieves, and with rescuing children fallen into crime from becoming habitual or hardened offenders; while they have undoubtedly had the effect of preventing large numbers of children from entering a career of crime. These conclusions are confirmed by statistics of the juvenile commitments to prison in England and Wales since 1856, two years after the passage of the English Reformatory Act, and one year before the first Industrial School Act. In 1856, the number of these commitments was 13,981; in 1866, 9,356; in 1876, 7,138. Since then the number has gradually decreased, and had fallen in 1881 to 5,483. Before these schools came into operation it is beyond doubt that a large portion of adult criminals of the worst classes consisted of those who in their childhood had been neglected or abandoned or trained to a career of crime.

#### SEC. 11. DEPENDENT CHILDREN.

All states and all countries have their dependent children. From causes too innumerable to mention, many in their tender years are thrown on the cold charity of the world, while there are others scarcely less unfortunate who are reared under the influence of dissolute parents.

Says the author of "Ginx's Baby:"

Your dirtiest British youngster is hedged around with principles of inviolable liberty and rights of *habeas corpus*. You let his father and mother, or any one else who will, save you the trouble of looking after him, and mold him in his years of tenderness as they please. If they happen to leave him a walking invalid, you take him into the poorhouse; if they bring him up a thief, you whip him or keep him at high cost at Millbank or Dartmoor; if his passions, never controlled, break out into murder, you hang him—unless his crime has been so atrocious as to attract the benevolent interest of the Home Secretary; if he commit suicide, you hold a Coroner's inquest, which costs money; and however he dies, you give him a deal coffin and bury him. Yet I may prove to you that this being, whom you treat like a dog at a fair, never had a day's, no, nor an hour's, contact with goodness, purity, truth, or even human kindness; never had an opportunity of learning any thing better. What right have you, then, to hunt him like a wild beast, and whip him, and fetter him, by expensive and complicated machinery, when you have done nothing to teach him any of the duties of a citizen?

And again:

I do not say that it can be done; but, in order to transform the next generation, what we should aim at is to provide substitutes for bad homes, evil training, unhealthy air and food, stagnation, and terrible ignorance, in happier scenes, better teaching, proper conditions of physical life, sane amusements, and a higher cultivation. But who is to pay for all this? The state, which means society, the whole of which, to its last member, is directly interested. I tell you that a million of children are crying to us to set them free from the despotism of ignorance and crime protected by law.

#### SEC. 12. NUMBER OF CHILDREN.

In California it is difficult to assert how many children or what proportion need the fostering care of the State, or how many are guilty of misdemeanors, for which their punishment is imprisonment in the county jail. By the last report of the Prison Directors of this State it appears that there were in the State Prisons of California one hundred and eighty-four persons who had not yet attained their majority.

In 1853 the Grand Jury of the County of New York reported that, "Of the higher grades of felony four fifths of the complaints examined have been against minors, and two thirds of all the complaints acted on during the term have been against persons between the ages of nineteen and twenty-one."

In 1852 the Warden of the City Prison of New York said:

The astonishing fact that more than *one fourth* of the entire number committed to this prison, and that nearly *one half* of those charged with petty offenses against persons and property, have not attained the age of 21 years, calls loudly for the adoption of some measures which shall stay the progress of these cadets of crime.

#### SEC. 13. PROGRESS IN NEW YORK.

The progress in the abatement of these evils, by an organized system of private charity, made since that time in New York, is shown in the thirty-third annual report of the Children's Aid Society, made in November, 1885. First, the following extract is taken from the report made to that society in 1865:

For the sake of more clearly seeing the effect of these charities toward children, we go back nine years, to 1855, the criminal records of which lie conveniently to our hand, and from which the five-year census dates. The population of New York in that year was 629,810; in 1860, 814,254, or an increase of more than 29 per cent during the five years, or more than 5½ per cent per annum. Our latest returns from the city prisons are for the year 1863, being made out on January 1, 1864. The census of that year has not yet been rendered, but we can safely estimate the increase of population since 1855, in eight years, as 40 per cent (forty per centum). It is probably much nearer 50 per cent.

In examining the returns of commitments to the various city prisons for the year 1855, for what are usually juvenile offenses, we find that there were imprisoned, in the year 1855, 46 pickpockets. By the natural increase of population there would be, in 1863, 64; but the true result is, in 1863, 37 pickpockets, or a proportional decrease of nearly 40 per cent of this class of young offenders.

Petit larceny is especially a crime of children. There were imprisoned for this offense, in 1855, 3,299. By the natural increase in population there should be, in 1863, 4,618; but the true result is, in 1863, 3,099, or a proportional decrease of about 33 per cent of petty thieves in eight years.

Vagrancy is peculiarly a cause of crime and its punishment among boys and girls. There were imprisoned for this offense, in 1855, 3,376. By the natural increase there should be, in 1863, 4,726; but the true result is, in 1863, 2,908, of whom it should be remarked that 1,756 were females. We have thus, in eight years, a proportional decrease of about 40 per cent of vagrants.

But lest some should suggest that possibly this decrease of crime is among the adults, the war having removed so large a portion of the criminal population, let us turn to the commitments of boys and girls—of minors. The only returns at present furnished from the city prisons are of those under 20 years, the class under 10 years being included. Of these there were, in 1855, 4,669. By the natural increase there should be, in 1863, 6,536; but the true result is, in 1863, 4,998, of whom 2,945 were boys and 2,454 girls. So that during the war the number of boys who are criminals has increased only 424, and of girls has fallen off about 400.

#### SECTION 14. SUBJECT CONTINUED.

The report then continues:

During a portion of the period through which the following figures run, the population of the city increased from 629,810 in 1855, to about 1,356,958 in 1884. While, as usual, great numbers of poor people remained here, left by the foreign immigration.

##### COMMITMENTS OF FEMALE VAGRANTS.

1857.....	3,449	1877.....	2,044	1882.....	1,788
1859.....	5,778	1878.....	2,106	1883.....	434
1860.....	5,880	1879.....	2,045	1884.....	2,520
1871.....	3,172	1880.....	1,541		
1872.....	2,243	1881.....	1,854		

##### COMMITMENTS OF YOUNG GIRLS FOR PETIT LARCENY.

1859.....	944	1869.....	989	1880.....	361
1860.....	890	1870.....	746	1881.....	309
1861.....	880	1874.....	572	1882.....	392
1863.....	1,113	1877.....	452	1883.....	298
1864.....	1,131	1878.....	475	1884.....	267
1865.....	977	1879.....	380		

In regard to commitments of young girls, it should be remembered that our police statistics include now all those committed to charitable and reformatory institutions; whereas, formerly, only those imprisoned were reported in these tables.

## COMMITMENTS OF MALE VAGRANTS.

1859.....	2,829	1878.....	2,672	1882.....	2,285
1860.....	2,708	1879.....	2,434	1883.....	2,737
1876.....	1,960	1880.....	1,917	1884.....	3,372
1877.....	3,253	1881.....	2,330		

## COMMITMENTS OF MALES FOR PETIT LARCENY.

1857.....	2,450	1877.....	2,346	1881.....	1,926
1859.....	2,626	1878.....	2,210	1882.....	1,955
1865.....	2,347	1879.....	1,844	1883.....	2,055
1876.....	3,253	1880.....	2,011	1884.....	1,925

## COMMITMENTS OF BOYS UNDER FOURTEEN YEARS OF AGE.

1864 (under 15).....	1,905	1878 (under 14).....	2,007	1882 (under 14).....	2,124
1865 (under 15).....	1,934	1879 (under 14).....	1,670	1883 (under 14).....	2,118
1876 (under 14).....	2,076	1880 (under 14).....	1,651	1884 (under 14).....	2,248
1877 (under 14).....	1,930	1881 (under 14).....	1,823		

It will be seen from these figures that the commitments of girls and women for vagrancy fell off from 5,880 in 1860, to 2,520 in 1884, or from 1 in every 138½ persons in 1860 (when the population was 864,224), to 1 in every 538 in 1884 (when the population was 1,356,958). This certainly looks like some effect from reformatory efforts. Again, the commitments of petty girl thieves fell off from 1 in every 739 in 1863 to 1 in every 5,082 in 1884. Male vagrants, also, have diminished in twenty-five years largely in proportion to the population. Male petty thieves have fallen off some 700 during twenty-five years, and greatly in the average to the whole number, as have also the commitments of boys under 15 years. Our classification in the police reports of what is called "juvenile delinquency," shows a like diminution of children's crime.

## JUVENILE DELINQUENCY.

## Number Arraigned.

Year.	Total.	Males	Females.	Committed.
1875.....	1,139	932	207	917
1876.....	1,186	888	298	976
1877.....	1,035	748	287	794
1878.....	905	654	251	605
1879.....	552	436	116	266
1880.....	628	499	129	357
1881.....	610	467	143	330
1882.....	642	510	132	316
1883.....	610	496	114	393
1884.....	546	443	103	323

## COMMITMENTS OF GIRLS UNDER 20.

Arrests in 1863.....3,132

## COMMITMENTS.

1877.....	2,657	1881.....	2,107	1884.....	2,413
1878.....	2,172	1882.....	1,860		
1880.....	1,758	1883.....	2,054		

## GRAND LARCENY ARRESTS.

## Males.

1874.....	1,356	1880.....	811	1883.....	1,062
1875.....	1,263	1881.....	771	1884.....	1,218
1876.....	1,077	1882.....	848		

## Females.

1874.....	275	1880.....	204	1883.....	199
1875.....	274	1881.....	149	1884.....	239
1876.....	265	1882.....	156		

## GRAND LARCENY COMMITMENTS.

1874.....	1,028	1878.....	662	1882.....	719
1875.....	981	1879.....	601	1883.....	831
1876.....	847	1880.....	723	1884.....	935
1877.....	813	1881.....	658		

The above figures, though they show an increase of crime during the past year (1884), which is partly owing to the classification of the new Code, yet prove a great decrease in the past twenty-five years.

A remarkable effect of all these reform movements is also seen in the general reduction of crime in this city, as is proved by the following record from the police report of 1881:

YEAR.	Total Cases Disposed of.	ARRAIGNED.		HELD.		Total.
		Males.	Females.	Males.	Females.	
1875.....	84,399	60,331	24,068	36,841	17,814	54,655
1876.....	87,307	63,789	23,578	39,180	17,904	57,084
1877.....	79,865	57,859	22,006	35,335	16,631	51,696
1878.....	78,533	56,004	22,529	35,271	16,515	51,786
1879.....	65,344	46,631	18,713	28,643	14,236	42,789
1880.....	68,477	49,801	18,676	31,539	14,819	46,358
1881.....	67,135	48,998	18,137	31,255	14,054	45,309
1882.....	66,867	49,625	17,242	33,117	14,032	47,149
1883.....	70,701	51,471	19,230	33,624	16,023	49,647
1884.....	74,647	54,317	20,330	35,308	16,537	51,845

This remarkable decrease of over 12½ per cent in all crimes against persons and property during the past ten years, as well as the decrease from previous years, is one of the most striking evidences ever offered of the effects of such labors as those of this society and of many similar charities. It has gone on regularly in years both of business depression and prosperity. It proves that such labors are diminishing the supply of thieves, burglars, vagrants, and rogues.

This is instructive as showing what can be done by organized effort, and showing how large classes may by proper effort be saved from a criminal life.

## SEC. 15. PUBLIC SCHOOL SYSTEM.

How far the public school system of a State can be utilized to operate as an educator in the moral sentiment is a problem difficult to solve. All experience teaches that crime prevails among the idle. For this reason, in large cities it is found by experience, that juvenile criminals are confined almost exclusively to those who are not engaged in some honest employment. While the amount of crime among newsboys and bootblacks, although members of this class, are exposed to the same temptations as others of their age and surroundings, is comparatively small. Idleness leads to crime. Employment has the opposite effect.

## SEC. 16. TEACHING OF TRADES.

Pertinent to this subject is the topic of how far trades and mechanical pursuits should be taught in our public schools. It is evident that the great majority of our population must obtain their livelihood by manual

labor of a greater or less degree of skill. It should be the aim of a school system not only to furnish sufficient knowledge to make men good and patriotic citizens, but also sufficient to make them useful citizens. This can be done only by educating them to believe that all labor is honorable and that we all must labor in some pursuit or another.

#### SEC. 17. REPORT OF ASSEMBLY COMMITTEE.

This matter was referred to in the revised report of the Assembly Committee on Prisons of California, made in 1881.

What provisions (says the report) are made to save the homeless, destitute, neglected, and vicious children from the first fall; or if they have fallen, to lift them up again and rescue them from a criminal career? We are answered: the common schools. These, like normal schools, academies, colleges, and universities, are excellent, and subserve most useful and beneficial purposes. Pray, tell of what use, practically, common schools are to the ragged, vicious, and incorrigible boys on the wharves, and in all the purlieus of our great and small towns, who never enter their sacred apartments? It may be answered that they have an opportunity to attend schools, and therefore the fault and misfortune are theirs. In this matter the community has an interest; they form a part thereof, and their faults and crimes affect every interest and every member of society, and become the misfortune of society itself.

Neither logic nor sophistry will alter the facts that *over fifty thousand* of our youth in this State, between the ages of 5 and 17, last year did not cross the threshold of any institution of learning. It is a startling fact that there is an army of youth in this State who are being educated in dens of vice and trained in a criminal course whom our school system does not reach. Public sentiment and law do not authorize or warrant the police in arresting and placing in a cell every truant and idle youth, as they once did in Aberdeen, Scotland. The State is spending money with a lavish hand—about \$3,000,000 annually—on the 150,000 good boys. Why not devote a little—if necessary some of the \$3,000,000—to the reclaiming of our 50,000 wandering boys, and make them good, too, and useful children of the State? Doth not the scriptural inquiry and doctrine apply here with undiminished force? How think ye? If a man hath an hundred sheep, and one of them be gone astray, doth he not leave the ninety and nine and goeth into the mountains and seeketh that which is gone astray? And why should not society and the State gather up its erring, wandering children and protect them, and shield them in the great fold of humanity, encompassed by charity, love, and law, and make them, useful citizens of this great republic?

#### SEC. 18. TABLE OF MR. THOMPSON.

Fred. L. Thompson, Chaplain of the Southern Illinois Penitentiary at Chester, has prepared a table showing the prime causes of crime on a basis of 500 men taken in succession from those in the prison. From the 500 convicts examined by uniform questions, it appears that 419 were without home influence at 18 years and under. Concerning their education, it appears that 218 never had attended school; 104 went to school two years and less; 99 went to school five years and over two.

#### SEC. 19. REMARKS OF MR. THOMPSON.

Mr. Thompson says, in the report by which his table is accompanied:

I have read every available thing on crime, its cause and cure; on prisons, their discipline, etc. I have talked freely with the convicts as to their early lives, their home influences, their early opportunities, and their habits, and I have come to the conclusion that there are two prime causes of crime: *the want of proper home influence in childhood and the lack of thorough well disciplined education in early life.* Of the first there are at least five classes—those who never knew a home; those who lost parents, one or both, while young; those who had vicious homes; those who ran away from home in the formative period of life; and those who were over-indulged in their homes. Of the second, there are those who never went to school; those who went but very little; and those who played truant, or were idle and refractory in school. The lack of this early influence and training at home, and of this discipline and learning at school, has left the individuals morally and mentally weak, the easy subjects of bad habits, vicious appetites, and designing men. These drift into the tide of bad associations, trashy and then vicious reading, to places of carnal amusements, to saloons, gaming houses, houses of ill-fame, to the society of the

vulgar and criminal, to the committing of crimes—small at first, but bolder at last—and then into the penitentiary. The current of this stream is as traceable, and its sweep as powerful and merciless, as the channel of the Mississippi River. As the latter, unmoored, sweeps its drift into the Gulf of Mexico, so certainly the former sweeps its drift into the penitentiary, or some other form of penal servitude, unless the strong arm of society is in some way put forth to the rescue.

#### SEC. 20. COMMENTS OF MR. ALTGELD.

Mr. John P. Altgeld, commenting on these facts says, and the report of Mr. Thompson says:

This showing is not exceptional to that penitentiary; on the contrary, these conditions are the same in all of the large prisons of the country. I have examined the reports of nearly all the large prisons in the United States, and find a remarkable similarity in all of them, so far as they treat of the question under consideration.

The truth is, that the great multitudes arrested for the first time are the poor, the unfortunate, the young, and the neglected; of those who are weak, and, to a great extent, are the victims of unfavorable environments. In short, our penal machinery seems to recruit the victims from among those who are fighting an unequal fight in the struggle for existence.

The subject of crime-producing conditions has received but little attention in the past, and is only now beginning to be discussed. It has always been assumed, in our treatment of offenders, that all had the strength, regardless of prior trainings and surroundings, to go out into the world and do absolutely right if they only wanted to, and that if any one did wrong it was because he chose to depart from good and do evil. Only recently have we begun to recognize the fact that every man is, to a great extent, what his heredity and early environment have made him, and that the law of cause and effect applies here as well as in nature.

Nor have we thus far sufficiently considered the fact that a large portion of the human family cannot say "no" at all times when they should. How common it is for people of education and character to do things which they feel at the time are injurious, yet an influence which, somehow, they cannot resist, impels them, and they act, as it were, under protest, often doing things which, at the very time, fill them with dread.

This is true of many who had excellent training, while among the less fortunate there are multitudes, with fair intelligence and industry, who want to do right, but who suddenly find themselves within the power of an evil influence, exerted by pretended friends, which they dread, which drags them down, often leads them against their will into crime, and from which, unaided, they cannot free themselves. They are morally weak, not naturally bad. They are tools, not masters, mere instruments, not principals, and, so far as it concerns moral responsibility, might as well be inanimate and unconscious. Yet we treat them as if they were masters.

#### SEC. 21. SOME SUGGESTIONS.

Looking to the care of juveniles thrown on the charge of the State, some suggestions may now properly be made. In California, and in truth, in nearly all civilized countries, the government has sat in silence until the child had committed some infraction of the laws. Then in expensive reformatories it undertook the task of reformation. Or, if it went further, it mixed the guilty with the innocent. Yet it must be evident that the State has a grave duty to perform in the care of the abandoned child who has been deprived of its natural refuge either by the fault or misfortune of its parents. From the ranks of the neglected, abandoned, and ill-treated children come those who become habitual paupers and criminals. Aside from any humanitarian considerations, it follows on the principle that an "ounce of prevention is worth a pound of cure," that it is the duty, as well as the interest of the State to provide for the maintenance and education of all dependent children before the evil influences by which they are constantly surrounded are able to effect their ruin.

#### SEC. 22. IMPORTANCE OF PREVENTION.

If it is well to reform the child who has taken one false step, how much more important is it to prevent from becoming a foe to society, the child



whose life is yet unstained with crime, but whose circumstances are such that it is tempted, nay, almost compelled to embrace a criminal life to obtain the necessities for its existence.

Of course the family is the best place for such children, but until they can be so placed, some provision should be made for their support until they reach the age of, say twelve years.

#### SEC. 23. MESSAGE OF GOVERNOR OF OHIO.

How deserving this matter is of careful consideration, is aptly shown in the annual message of the Governor of Ohio, delivered in 1884. He says:

The Christian world in dealing with the dependent classes, its homeless children, and in the management of its reformatories and prisons, has reached that point where special attention is demanded to measures that have for their object the prevention of crime, the building up of the character of the unfortunate criminals, to the end that they may be reformed and be assisted to lead useful lives. From the examination that has been given to this phase of this important subject, and the conclusions reached by the best thought that has given it attention throughout the world, it is thought that a very marked reduction in the number of criminals may be achieved. The "Children's Home," of recent origin, is the first and most valuable step in the right direction. It is believed that three fourths of the waifs upon society, who grow up without homes or parental care, become vagrants and criminals. The purpose of the Children's Home is temporarily to shelter and care for them, with the ultimate purpose of finding good homes for them. It may be accepted as a fact, that there is a childless home for every homeless child in the land. The mission then, in short, of the Children's Home, is to find the childless home for the homeless child.

The experience of the children's homes in this State goes far to demonstrate the truth of this statement, with the further demonstrated fact that more than three fourths of all the inmates of our children's homes grow up to be useful and honorable citizens. The bare statement of what seems to be a demonstrated fact that, because of the children's homes, we are enabled to give society useful and self-supporting citizens to the number of more than three fourths of all their inmates, whereas without the children's homes more than three fourths of the same children would become vagrants and criminals, is an argument in favor of their encouragement of such force as to command the favorable attention of the General Assembly to the necessity of giving the institution of children's homes in every county of the State their earnest attention.

#### SEC. 24. WHAT HAS BEEN DONE IN MICHIGAN.

The State that has made the most advance in this direction is Michigan. Prior to the year 1874, the dependent children in that State were taken care of in the poorhouses. The State, however, in this year took the broad yet just principle, that when through poverty there was no one to care for and train a child, the parental relation towards the child should be assumed by the State, and the State should see that the child had provided for it the best possible substitute for home and parents. This step was regarded as an experiment. The State was to assume the care, guardianship, and education of the children of this class until they reached their majority, or at least until, in the judgment of the officers of the State, it was best to restore them to their natural parents, or to allow them, when they had arrived at a proper age, to take upon themselves the whole responsibility of their care and training.

#### SEC. 25. A STATE INSTITUTION ESTABLISHED.

In carrying this idea into practical execution, it was determined to establish a State institution, sufficiently large to take all children over three and under twelve years of age from the poorhouses, and to maintain them there until suitable homes and quarters could be found for them. By placing them in such an institution they would be removed as far as

possible from the unfortunate condition and surroundings for which they were not responsible. A building, 198 feet by 175 feet, in the shape of a cross, was erected. Around this were grouped twelve others. Nine of these are used for family cottages, and of the other three, one is used for a hospital, another for a water tower, engine-house, laundry, and gas works, and the third is used as a school building. In the family cottages the children live under the care of an educated and cultured lady. She attends to all their wants except cooking and washing. In each family are placed about twenty-five children. The boys and girls are kept separate in cottage life from each other, but they all attend the same school. The ground appurtenant to the institution embraces a farm of 110 acres. This farm is amply sufficient to afford pasture and meadow land for the requisite number of cows to supply the children with milk, and for supplying fruit and vegetables. The school is supplied with the best teachers.

#### SEC. 26. THOSE COMMITTING CRIME DEBARRED.

It should be remembered that those who had committed crime were not to be allowed to enter the institution. It was intended for the care of those who were dependent upon the public for support, and these were to be clothed, fed, and trained morally, mentally, and physically. The Board of Control are the legal guardian of each child until the child becomes of age, and, as stated, one of the fundamental designs was to leave no stigma of crime or disgrace upon any child who had been cared for by this institution. The Michigan system also provides for an agent in every county to examine and report as to the character of the Home before placing the child there, and to visit each ward of the school when requested, and also for a system of reports from the guardian and agent both, and, finally, an officer of the school is required to visit each year all indentured children.

#### SEC. 27. AN EXPERIMENT—REPORT OF BOARD OF CONTROL.

This system of treating the dependent children of the State was experimental. But the system seems to have produced the best results. After ten years of experience the Board of Control say in their biennial report for the years 1883-4:

This school is intended to rescue children from nurseries of crime and to secure for them self-supporting and respectable citizenship. It is not an asylum for the diseased, but for those of sound mind and body, who can be benefited in the school, and who will be received into families. At three years of age, as soon as they are liable to be impressed by bad associations, they are removed to this institution. Under this unique system, by which a State generously and nobly cares for its own dependents without transferring them to other States or counties to be supported in families, poorhouses, or prisons by others, there has been a success which has been gratifying, not only to those in charge, but to the people. In these ten years' experience there has been developed much strength in the system, and perhaps sometimes weakness, by reason of mistakes in administration, but all along there has been a constant effort to improve methods and devise better ways to execute the law so as to obtain still higher and better results. This spirit prevails as much to-day as when the school first opened. There is here no self-satisfaction that would prevent investigation and the adoption of whatever might conduce to a higher perfection of our work. Could we give in detail personal histories of children, there would be interesting and absorbing stories told of great numbers of these little waifs of fortune.

There is no more commendable feature of our law than that it provides for our State caring for its own dependents. All forms of riddance of dependents are objectionable in every respect. It has been a standing complaint for many years by our General Government that European States send here their paupers, and now and then pardon convicts or suspend sentence provided they will emigrate to America. It has also been long complained of that Eastern States gather up and send dependent children here in great numbers without asking our consent, leaving them with no written indenture, to remain



at the mutual option of the child and the person taking it, many gravitating to the poor-house and reformatories. In the legislative report in 1871, recommending the establishment of this school, the committee suggested that it might be well to exclude by law the introduction of dependent children from other States. Michigan proposes to take care of her own children, and if every State did the same there would be no need of their migration; and the decrease of juvenile dependency would be more signally marked. But when one country sends its dependents to another to avoid their support, one State to another, or one county passes paupers and tramps on the railroads to another, there is no general improvement, such a course rather tending to encourage, increase, and perpetuate chronic pauperism. But whatever other States may do, Michigan will care for her own poor, believing it to be her duty to do so.

By doing so much for these children, are you not encouraging and increasing pauperism? This question occasionally comes to us from well-meaning friends in this country and from abroad. Our statistics answer this question in the negative. They show that with the great increase of our population, we readily accommodate all who are admissible. It is certain that getting into the State public school is not made too easy. The laws of the State throw wise restrictions around their admission. This school is not open for the children of parents who are simply in limited circumstances, but for children whose parents are no longer able to support them, and the issue is between starvation or relinquishing parental rights to the State. The parent is aware that the child surrendered to the State is thereafter the child of the State only. The public does not encourage the parent to bring the child. It discourages dependency. But when there is no parent or friend to support, then the State, for its self-protection, as a wise economy, and for the child's welfare, giving due notice to the parents, brings the child before the proper Court for a careful judicial examination as to the child's dependence on the public for support. From the decision in this Court the parents may appeal. But the sad fact appears in the large majority of cases that there are no parents to appear. There has been abandonment, death, imprisonment, sickness, or chronic dependence, and the child is left alone with no protector save public or private charity. Received into this house, the child is soon contented and happy. There is no over-indulgence, no sentimentality, but good common sense home treatment. There is here good common school education, plain, healthy food, comfortable clothing, kind treatment, elevating influences, and, as far as possible, agreeable home surroundings. There never was a happier company of children than are here. But all this does not operate to make the child cling to this kind of life. The natural longing of a child for a home of its own is much the stronger, and it hails with gladness the opportunity to go out from this pleasant home to one of its own in some private family. The love of home in the child is a strong barrier against prolonged institutional life. However much others may differ as to the merits of institutional or family life, and however attractive the institution may be, the child will always favor this being what it was intended for, a temporary home only. It is also true that you may destroy this innate love of home in the child by protracted life in an institution, so that you can make here chronic dependents as surely as they are made with adults by too long a residence in the county poorhouse. The safest course is to follow the natural instincts of the child and give it a good home as may be, and by so doing chronic dependence will not be encouraged under this system. The average time spent in this school is now not quite one year. From the opening of the school to 1880 it was twenty months and two days. Since 1880 it has been eleven months and ten days. For the past year it has been under ten months. This is the best evidence that we are surely realizing gradually the ideal of a temporary home. We have noticed that when a child of ten or twelve remains here over two years it will generally begin to lose its self-reliance and ambition, and the desire for another home decreases. Great effort is made that no child be kept here who is over twelve and none for over two years. The average age is about eight years. Some children come here from very low and bad associations. They have been influenced by their former lives to their loss. Such children have to remain longer and be fitted to put in a good home. But the majority of children can be placed out, if a home is found, the very day they come, and the better for them.

#### SEC. 28. VISITED BY MEMBER OF COMMISSION.

This institution, at Coldwater, Michigan, was visited by one of the members of our Commission, and found to be all that was claimed. It has done much towards decreasing crime, and is viewed with favor by all who have visited it.

#### SEC. 29. VIEWS OF THE COMMISSION.

We believe that the step taken by Michigan is one in the right direction. It was said in the address of Drouin de Lhuys before the French Institute in 1878 that "the State of Michigan, which has existed only about forty years, has the merit of preceding ancient Europe in the inauguration of a new era for dependent children."

But at the same time we are constrained to say that it might be better to postpone action on this matter until some other needed improvements are made in our penal and preventive system. But we desire to be understood as highly indorsing the course taken by Michigan. We append a copy of the Act in force in Michigan. We submit the measure for your careful consideration, with the recommendation that the system therein proposed will be a great advance towards the reduction of that growing army of abandoned children who are almost insensibly drilled in their early years in the ways of crime. This Act will furnish the basis for legislation when we shall conclude that, after the passage of more immediately pressing measures, the time shall arrive for its adoption.

#### SEC. 30. MICHIGAN ACT.

The Act in force in Michigan governing this school is as follows:

SECTION 1. *The People of the State of Michigan enact*, That the Governor shall appoint three Commissioners, for the purpose of selecting a suitable site and erecting thereon buildings for a State School or temporary home for dependent and neglected children, such institution to be known as the "State Public School."

SEC. 2. The said Commissioners shall have power to receive proposals for the donation of land to the State for such site, and to receive the same by gift, or they may purchase such site if no proper location shall be given for that purpose, and they may receive proposals for donations of money or other securities, in behalf of this State, for the benefit of such school, and they may locate the same at such point as they shall deem for the best interests of this State. They shall receive no pay for their services under this Act, except their traveling and other official expenses. That the Governor shall be ex officio a member of said Board.

SEC. 3. That the deeds for such site shall be duly executed to the people of this State and delivered to the Auditor-General, and the State Treasurer thereupon is hereby directed to pay, on the warrant of the Auditor-General, to such grantor of whom such site shall be purchased, in case of the purchase of the same, such sums of money as may be required to pay for the site; *provided*, that not over two thousand dollars shall be paid for that purpose. That said Commissioners shall at their first meeting appoint from their number a Secretary and Treasurer.

SEC. 4. That the sum of fifteen thousand dollars for the year eighteen hundred and seventy-two, and fifteen thousand dollars for the year eighteen hundred and seventy-three, is hereby appropriated for the purpose of carrying into effect the provisions of this Act, which said sums the Auditor-General shall add to and incorporate in the State tax for the years eighteen hundred and seventy-one and eighteen hundred and seventy-two, and when collected, shall be passed to the credit of the State Public School Fund, and may be drawn by the Treasurer of said Commissioners upon warrants made by their Secretary, approved by Commissioners, and countersigned by the Governor.

SEC. 5. It shall be the duty of the Secretary of said Commissioners to render, quarterly, to the Auditor-General, accounts current of all cash transactions, and all moneys received, with the proper vouchers; and no money shall be drawn by virtue of this Act by said Commissioners unless they shall have first filed with the Auditor-General an estimate and statement, showing the purpose for which such money is required.

SEC. 6. The said Commissioners shall have the superintendence of the grounds, and the design and construction of the necessary buildings, with power to appoint an architect, superintendent, and other necessary agents and assistants, and to fix the compensation for their services, subject to the approval of the Governor; the principal building shall have a capacity for not less than one hundred children.

SEC. 7. Said Commissioners, before they enter upon the duties of their office, shall each take and subscribe the constitutional oath of office, and file the same in the office of the Secretary of State, and the Treasurer of said Commissioners shall give his bond to the people of this State in the penal sum of ten thousand dollars, with two or more sufficient sureties approved by the Governor, conditioned for the faithful performance of the duties required of him, and to properly account for all moneys received by him under this Act.

SEC. 8. When the State Public School shall be finished, the said Commissioners shall make under their hands a certificate thereof, which shall be transmitted to the Governor; who shall thereupon give public notice that the same is ready for the reception of dependent and neglected children. That after completion of the State Public School building, and until the last day of the session of the Legislature next succeeding such completion, said Commissioners shall have the control and government of said State Public School, with the same authority and duties as are given to the Board named in Section 9 of this Act.

SEC. 9. The general supervision and government of said State Public School shall be

vested in a Board of Control, to consist of three members, who shall be appointed by the Governor, by and with the advice and consent of the Senate, the members of which Board shall hold their offices for the respective terms of two, four, and six years, from the last day of the session of the Legislature next after the completion of said State Public School building, and until their successors shall be appointed and qualified, said respective terms of office to be designated in their several appointments; and thereafter there shall be one of said Board appointed every two years, whose term of office shall continue for six years, or until his successor is appointed and qualified. The members of said Board shall constitute a body corporate, under the name and style of the "Board of Control of the State Public School," with the right of suing and being sued, of making and using a common seal, and altering it at pleasure. That said Board of Control shall have the power of taking and holding by purchase, gift, donation, devise, or bequest, real or personal estate to be applied to the use of the institution.

SEC. 10. It shall be the duty of said Board to meet once each three months, and oftener if necessary. It shall elect from its own number a President and Secretary. It shall also elect a Treasurer, who may or may not be a member of said Board. Such officers shall hold their places during the pleasure of said Board. The said Treasurer shall give his bond to the people of this State, with two or more sufficient sureties, to be approved by said Board and by the Governor, in the penal sum of at least ten thousand dollars, or in such larger amount as said Board may require, conditioned for the faithful performance of the duties required of him by law, and to account for and pay over, as required by law, all moneys received by him as such Treasurer. The said Board shall establish a system of government for said school, including all necessary regulations for the good order thereof, and for the maintenance, health, instruction, and moral training of the children in said school; for placing them in family homes, and for their supervision there while they remain the wards of said Board. The said Board shall appoint a Superintendent, Matron, Cottage Managers, Teachers, and such other officers and employes as shall be necessary, who shall severally hold their offices during the pleasure of said Board; and said Board shall prescribe their duties and fix their salaries, subject to the approval of the Governor.

SEC. 11. Whenever the Superintendents of the Poor, of any county, shall find in their county any child over two and under twelve years of age, who in their opinion is dependent on the public for support, and is sound in mind and body, they shall file a petition in the Probate Court of their county, signed by at least two of their number, wherein they shall state that in their opinion the child named is dependent on the public for support, is between two and twelve years of age, is sound in mind and body, and has no parents against whom its support can be enforced as provided by law. They shall also therein give the names, residence, and occupation of the parents, or either, so far as they are able, whether either is dead, or has abandoned the child; requesting therein an examination and determination by said Court as to such alleged dependence; and should the child be found by said Court to be dependent on the public for support, that an order be entered sending it to the State Public School. That upon the filing of such petition, if it shall appear therein that one or both of said parents reside in said county, the Judge of said Court shall issue a citation fixing the time and place for the hearing of such petition, which shall be served on one or both of said parents, if either can be found in said county, not less than two days before the time fixed for said hearing, requiring them to appear on said day and hour, and show cause, if any, why said child should not be declared by said Court to be dependent on the public for support, and sent to the State Public School. That in case it shall appear by such petition that neither of said parents are living or do not reside in said county, or in case one or both of said parents shall indorse on said petition a request that the child be sent to said school as requested therein, then the citation herein provided for need not be issued, and the Court may thereupon proceed to the examination herein provided for. It shall be the duty of the officer receiving such citation to use due diligence to find and serve the same on one or both of said parents; yet the proceedings under such petition shall not be deemed invalid by reason of any failure to serve such citation, or by any informality or irregularity in such petition or service.

SEC. 12. That on such examination the child shall be brought before said Court by said Superintendents of the Poor; whereupon it shall be the duty of said Judge to investigate the facts and ascertain whether said child is dependent on the public for support, its residence, and as far as possible the whereabouts of the parents, when and how long the child has been maintained in whole or in part by public or private charity, the occupation of the parents, if living, whether they are supported by the public or have abandoned the child, and to ascertain, as far as possible, if the child is found dependent, the causes thereof. The said Judge is authorized to compel the attendance of witnesses on such examination; and it shall be the duty of the Prosecuting Attorney of the county, when requested by said Judge, to appear in any such examination in behalf of the petition. Any friend of said child may appear in said Court in its behalf; and the said Judge may, in his discretion, request the Supervisor of any township or ward to appear in behalf of the child, yet it shall not be necessary to issue any citation or other notice to other than the parents. The record of the proceedings shall show who, if any one, appeared in behalf of the child on such examination.

SEC. 13. That if on such examination the said Judge shall find that the said child is dependent on the public for support, is over two and under twelve years of age, and is sound in mind and body, he shall enter such finding by a proper order in the journal of the Probate Court in his office, certifying that the child is dependent on the public for support, and is entitled to admission to the State Public School at Coldwater, and order-

ing that it be taken to said school by the Superintendents of the Poor, and admitted therein, and shall deliver to the said Superintendents of the Poor a certified copy of such order, which shall contain, besides said findings, a statement of the facts that are herein required to be inquired into, so far as they have been ascertained; and that said Superintendents of the Poor shall deliver such copy, with said child, at said school, to the Superintendent thereof, as soon as practicable after the making of such order. That upon entering such order, the parents of said child shall be released from all parental duties towards and responsibility for such child, and shall thereafter have no rights over or to the custody, services, or earnings of such child, except in cases where said Board may, as herein provided, restore the child to its parents.

SEC. 14. The object of this Act is to provide a temporary home for dependent children in said school where they shall be retained only until they can be placed in family homes. The said Board is hereby made the legal guardian of all children who shall be received in said school, and it shall be its duty to use special diligence in providing such suitable homes for such children as shall be approved, as herein provided, and to place them therein on a written contract to remain until they are twenty-one years of age, or in the discretion of said Board until they are eighteen years of age. Such contract shall provide for their education in the public schools where they reside, for teaching them some useful occupation, for kind and proper treatment as members of the family where placed, and for the payment on the termination of such contract to said Board for such children such sum of money as may be provided for in said contract. Whenever any ward of said Board who is not indentured has become self-supporting the said Board may so declare by resolution and thereupon said guardianship shall cease and the child shall thereafter be entitled to its own earnings. Whenever one or both of the parents of any ward of said Board, who is not indentured, have become able to support and educate it, the child may by resolution of said Board be restored to its parents; in which case the suitability of the home shall be certified in the same manner as herein required for placing children on indentures; and thereupon the guardianship of said Board shall cease.

SEC. 15. Whenever inquired of by the Superintendents of the Poor of any county, and whenever there is room for one or more children in said school from any county, it shall be the duty of the Superintendent of said school to notify the Superintendents of the Poor of such county how many children they can send to said school. That whenever there are more admissible children in the several counties than [that] can be received in said school, it shall be the duty of the Superintendent of said school to divide such admissions *pro rata* among the counties according to the number of dependent children in each, at the time of such admission, giving preference to counties of the same or larger population, that have had less admitted into said school. That whenever the Superintendents of the Poor of any county shall be informed by the Superintendent of said school that any dependent children from their county can be admitted into said school, it shall be their duty to forward them to said school, as provided in this Act, as soon as practicable. In those counties in which the distinction between township and county poor is maintained, it shall be the duty of the Superintendents of the Poor of such counties, on the written request of the Supervisor of any such township, to act for such township in securing the admission of dependent children to this school, in all respects as though such children were supported by the county. That the expense of transportation of children to said school, pursuant to law, and the expenses [expense] of returning any of said children to their counties, after their admission by said Board of Control, as improper inmates of said school, shall be audited by the Board of State Auditors and paid from the general fund.

SEC. 16. There shall be received into said school those children who have been declared dependent on the public for support as herein provided, and they shall be retained therein until they are sixteen years of age, unless they shall before that time be sent out as herein provided. While in said school they shall be maintained and educated in the branches usually taught in the common schools; they shall have proper moral and physical training and shall be taught how to labor so far as their age and condition will reasonably permit. The said Board is authorized to return to the counties from which they were sent the following classes of children:

*First*, Those who have become sixteen years of age and who for any reason cannot be placed in or retained in family homes.

*Second*, Those who by reason of vicious habits or incorrigibility cannot be placed in or retained in family homes.

*Third*, Those who in the opinion of said Board, based on the certificate of the physician of said school, are of unsound mind or body, or who have some serious physical disability which prevents their being placed in family homes. Whenever any child shall be ordered by said Board to be returned to its county as herein provided, the guardianship of said Board shall cease, and the child shall thereupon again become a charge on the county from which it was sent, and the Superintendent of said school in returning any child to its county shall report in writing to the Superintendent of the Poor of the proper county, the action of said Board and the reasons therefor.

SEC. 17. That whenever on the examination provided for in this Act the Judge of Probate shall determine that the child is dependent on the public for support, he shall cause it to be examined by the county physician, if there be one, and if not, then by a respectable practicing physician, and shall in no case enter the order in his journal, showing the child is admissible to this school, unless the physician making such examination shall

certify in writing, under oath, filed in said Court, that the child examined by him is, in his opinion, of sound mind, and has no chronic or contagious disease, and in his opinion has not been exposed to any contagious disease within fifteen days previous to such examination before the Judge of Probate; that a copy of such certificate shall be attached to the other papers required by this Act, to accompany each child to this school.

SEC. 18. That the Superintendent, Agent, or Board of Control of the State Public School is hereby authorized to consent to the adoption of any child who has or shall become an inmate of said institution, by any person or persons, pursuant to the provisions of an Act entitled "An Act to provide for changing the names of minors, adopted children, and of other persons," approved February 2, 1861; and that on such adoption the said Board of Control shall cease to be the guardian of the child so adopted.

SEC. 19. That said Board of Control is authorized to designate some officer, teacher, or other employé connected with said school to be the agent thereof, who shall be known as the Agent of the State Public School, and who shall act in that capacity during the pleasure of said Board. That his duties as such agent shall be prescribed by said Board, and shall include visiting, at such times as said Board shall direct, the wards of said Board which have been placed in families, and reporting to said Board the condition of such children, and any failures to comply with the terms of the indenture contracts; and [that] it shall also be his duty to find suitable homes for the children of this school, to investigate applications for such children, and to enter into contracts, in writing, on behalf of said Board, with persons taking such children; such contracts to contain a clause reserving to said Board the right to cancel the same when, in the opinion of said Board, the interest of the child requires it, and may also contain a clause authorizing the person taking the child to cancel the same any time within sixty days from the date of the contract, on returning said child to said school free of all expenses; that the authority herein given said agent is also hereby conferred upon the Superintendent of said school: that the salary and necessary traveling expenses of said agent shall be first examined and allowed by said Board, and shall then be audited by the Board of State Auditors, and paid from the general fund.

SEC. 20. The said Board of Control shall biennially report to the Governor, Legislature, and Superintendent of Public Instruction, presenting a detailed statement of the operations of said institution for the two fiscal years preceding the regular session of the Legislature, which shall include the report of the Treasurer of said Board of Control of all receipts and disbursements in his office for the same period, and the report of the Superintendent for the same period, setting forth the condition of said school, the names of regular employés and the salary of each, the number of children who have received instruction, the average number during each year in the school, the discipline prescribed, the studies pursued, the books used, the expense per capita for average attendance, the expense per capita estimating therein the expenses additional for those indentured, and such other information as he may deem important or the Governor or Superintendent of Public Instruction may request. The members of said Board of Control shall be allowed the expenses necessarily incurred by them in the discharge of their official duties, and three dollars per day for their official services actually and necessarily performed, which shall be audited by the Board of State Auditors and paid from the general fund.

SEC. 21. It shall be the duty of said Board to obtain information as often as practicable from all the children placed in families from this school, and to secure so far as possible the education and good treatment of such children, and the full performance of indenture contracts. It shall be the duty of said Board to procure written reports from such children at least once in each six months, one of which shall be from the person to whom the child is indentured, and the other from the agent of said school or from the Agent of the Board of Corrections and Charities for the county where the child resides, the Superintendent of said school to notify the officer he desires to visit the child and make the report. If it shall appear to said Board by such report, or from any other source, that the child visited is neglected or ill-treated, or is not being educated by the person with whom it is placed, or that the person having such child is unfit to have the care thereof, the said Board, or the Superintendent of said school, who may be authorized so to do by said Board, shall cancel the contract and cause the child to be returned to said school or removed directly into some other home, and notice thereof shall be given the County Agent of the county.

SEC. 22. Any person desiring to take a child from said school by indenture or adoption may apply for that purpose in writing, in such form as said Board shall prescribe, to the Superintendent or Agent of said school, or to the Agent of the Board of Corrections and Charities of the county where the applicant resides. That either of said officers who shall receive such application, other than said Superintendent, shall investigate the same, and report in writing to the Superintendent, in such form as said Board shall prescribe, the facts ascertained, and whether, in his opinion, the applicant is a proper person to have the care and education of the child; and no child of said school shall be placed in a home on trial, or by indenture or adoption, unless the same shall be approved by the agent of said school, or by the Agent of the Board of Corrections and Charities of the county where the applicant resides. It shall be the duty of the agent of said school, or the Agents of the State Board of Corrections and Charities, in their respective counties to visit the children of said school in families on indenture, at such times as they may be requested so to do by the Superintendent of said school, and only at such times; and shall then inquire into the management, condition, and treatment of such children, and shall, as soon as practicable, report to the Superintendent of said school the facts ascertained

showing whether the indenture contracts are being faithfully executed; and whenever it shall come to the knowledge of any such officer, so authorized to make such visits, that any child of this school, in a family on trial or on indenture, is being ill-treated, he shall immediately investigate the case and report the facts as aforesaid.

SEC. 23. It shall be the duty of said Board to preserve in said institution all legal papers, reports, and other valuable papers relating to each child, and shall provide and keep suitable record books in which shall be entered, during the time of the guardianship of said Board, a brief history of each child, showing its name, age, county, residence, when received, indentured, or adopted; the names, residence, occupation, habits, and character of the parents, so far as can be ascertained, and the name, residence, and occupation of the person who has taken the child by indenture or adoption.

## CHAPTER III.

## REFORMATORIES FOR YOUTHFUL CRIMINALS.

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## SEC. 31. A REFORM SCHOOL.

Much that has been said in the preceding pages with reference to the care of abandoned and dependent children, applies with increased force to the care of juvenile offenders. When a boy or girl has committed a crime, a punishment for the offense must in some manner be inflicted. Society must do this for its own protection. But it has still a more important duty

to perform than to visit upon the juvenile delinquent a certain amount of punishment. Whatever diverse views may prevail with reference to the probability of effective reformation of criminals of a mature age, there can be no doubt that most young criminals can, by a judicious system of discipline, education, and labor, be completely and permanently reformed. Under the system now prevailing in our State, these young persons are placed in contact with the most debased and vicious of the criminal class. If the offense be a felony, they are sent generally to the State Prison, although there is a provision among our statutes allowing the Judge, in his discretion, to place them under the care of the Boys' and Girls' Aid Society, whose headquarters are in San Francisco. If these offenders are convicted of misdemeanors only, they are, if unable to pay a fine, placed in the county jails, and allowed to associate indiscriminately with all others imprisoned in the same institution. That the effect upon them is pernicious, requires no argument to demonstrate.

## SEC. 32. SUBJECT IMPORTANT.

The Commission has given a great amount of thought and attention to this very important subject. Our Secretary has made it a question to be thoroughly examined, and has received in answer to inquiries, a large number of responses from persons whose position and experience render them competent judges in this matter.

## SEC. 33. VIEWS OF G. W. CROSSLEY.

G. W. Crossley, Warden of the Iowa Penitentiary, says in a letter to the Commission, dated April 19, 1886, in reply to the question: "Should youthful criminals be confined in the State Prison, or in a separate industrial or reform school?"

In an industrial or reform school, below the age of 16, save in exceptional cases, where such great depravity is shown as to reduce the prospect of reform below the minimum, all prisons contain more or less graduates from reform schools, but while this is true, it does not follow that it is owing to the mismanagement of the institutions. It is the incorrigible criminal young and old that goes back to the prison after discharge, and no system of prison management is adequate to effect a reformation of this class.

## SEC. 34. VIEWS OF GOVERNOR ABBETT.

Hon. Leon Abbett, Governor of New Jersey, in a letter to the Commission, dated April 20, 1886, says:

We confine youthful criminals in the State Reformatory School or in State Prison, according to the judgment of the Judge before whom they are tried, and the character of the crime they are charged with.

## SEC. 35. LETTER OF GOVERNOR PINGREE.

Hon. Samuel E. Pingree, Governor of Vermont, in a letter to the Commission, dated April 21, 1886, says:

Our practice of a separate institution for youthful criminals called the "Reform School" is most salutary.

## SEC. 36. VIEWS OF GOVERNOR ADAMS.

Hon. Jewett W. Adams, Governor of Nevada, in a letter to the Commission, dated May 1, 1886, says:

Youthful criminals should be confined in an institution separate from older criminals.

## SEC. 37. VIEWS OF GOVERNOR IRELAND.

Hon. John Ireland, Governor of Texas, in a letter to the Commission, dated April 19, 1886:

Youthful criminals should be in separate prisons called reformatories or any other name. They should be required to labor and be under a thorough system of discipline, with educational facilities.

## SEC. 38. VIEWS OF GOVERNOR LEE.

Hon. Fitzhugh Lee, Governor of Virginia, in a letter to the Commission, dated April 24, 1886, says:

To the third question I reply, youthful criminals should be confined in a separate institution, and not in the State Prison.

## SEC. 39. VIEWS OF GOVERNOR BATE.

Hon. William B. Bate, Governor of Tennessee, in a letter to the Commission, dated April 30, 1886, says:

I would think that it would be best for youthful criminals to be confined separately from the adults, although in our State they are not so separated.

## SEC. 40. VIEWS OF GOVERNOR PATTISON.

Hon. Robert E. Pattison, Governor of Pennsylvania, in a letter to the Commission, dated May 4, 1886, says:

Young offenders, who are not incorrigible and vicious, inherently, should for first violation of law, less than high crimes, be sent to trade schools. The State should establish such an institution, in which restraint, incarceration, or forcible detention should not be adopted. The school should afford the inducement to stay. If in cases of incorrigible or vicious characters, then a trade school should receive such inmates by commitment from a legal authority. The young delinquents should not be sent to a jail or prison.

## SEC. 41. VIEWS OF MR. GARRETT.

Philip C. Garrett, of the Board of Public Charities of Pennsylvania, in a letter to Governor Pattison, which the latter kindly forwarded to our Commission, says:

As regards youthful criminals, punitive measures of the nature of incarceration, should not be applied to children under 16 years, who should be placed in Reform Schools, such as those at Moryanza, Pennsylvania, Lancaster, Ohio, and Plainfield, Indiana. It is fairly to be presumed they can be educated out of their early vices. Youths over 16 committing their first offense, require the intermediate prison, or reformatory, of which that at Elmira is the best type, and I hope our own at Huntingdon will equal it. The details of their management can be obtained by a perusal of Mr. Brockway's reports. These and other pamphlets and works on penological subjects, I will be happy to forward to Mr. Devlin should you desire it. It does not appear to me that any of this class of offenders should be brought in contact with old offenders, during their detention. They should, therefore, never be sentenced to a common jail.

## SEC. 42. VIEWS OF MR. CHAPIN.

Wm. W. Chapin, of the Board of State Charities and Corrections of Rhode Island, answering for Hon. George Peabody Wetmore, Governor of that State, in a letter to the Commission, dated May 10, 1886, says:

The provision for treatment of juvenile offenders is embodied in the statute as follows: Whenever any person, under the age of 18 years, shall be convicted by any Court of any criminal offense, such Court may sentence such person to the State Reform School for a term not less than two years nor longer than his minority, or to such punishment as is otherwise provided by law for the same offense, and if the sentence be to the Reform School, then it shall be in the alternative, to the State Reform School, or to such punishment as would otherwise have been awarded. (Public Statutes, Chap. 248, Sec. 49.)

## SEC. 43. VIEWS OF MR. REED.

Harrison Reed, of Jacksonville, Florida, in a letter to the Commission, dated July 1, 1886, says:

Juvenile criminals should never be associated with adults, but consigned to strict moral, sanitary, and industrial instruction, with as little as possible of arbitrary force.

## SEC. 44. VIEWS OF MR. INGERSOLL.

D. W. Ingersoll, President of the Board of Managers of the Minnesota State Reform School, in a letter to the Commission, dated January 29, 1886, says:

They should be gathered into the reform school, educated in all the common branches, and taught some useful trade.

## SEC. 45. VIEWS OF MR. GREENE.

Jacob L. Greene, of Hartford, Connecticut, in a letter to the Commission, dated June 29, 1886, says:

One point, in answer to your fifth question, I am very clear upon: that juvenile offenders should be carefully separated from all others, not only because they are young and tender and impressible, and more easily reformable, but because the principle of classification and separation ought to be carried out to the greatest possible extent. Not only ought such young men and women who are criminals, guilty, perhaps, of their first offense, to be separated from those who are hardened and sinful, and apparently irreclaimable, and enemies to every reformatory effect, both for themselves and others, but the same care ought to be exercised in regard to all, whatever their age, who are not hardened in crime. It is little use to try to rouse manhood and a proper sense of his guilt, and a proper sense of his duty in a weak, ignorant man, whom you allow to remain in constant contact with a hardened villain who scorns and despises all your efforts. He will more than neutralize them. If you wish to produce effects upon a man's character, he must be put under conditions favorable to the influences which you bring to bear.

## SEC. 46. VIEWS OF MR. COFFIN.

Charles F. Coffin, of Chicago, in a letter to the Commission, dated June 28, says that they should be cared for:

First, in small institutions, where they can be trained to habits of industry, and suitably instructed and prepared for homes in the country.

## SEC. 47. VIEWS OF MR. CARTER.

George W. Carter, Warden of the Wisconsin prison, in a letter to the Commission, says that juvenile criminals should be placed "in reforma-

stories on the family plan, strictly graded according to character and disposition, farming and all trades to be carried on for their instruction."

#### SEC. 48. VIEWS OF MR. JONES.

Israel C. Jones, Superintendent of the House of Refuge, Randall's Island, New York, in a letter to the Commission, dated July 8, 1886, says:

In addition to industrial, mental, and moral training, the juvenile delinquent should be afforded the opportunity to acquire a trade, or some useful occupation, on arriving at a proper age; and if this cannot be accomplished by apprenticing, then the institution should, as far as possible, provide the necessary facilities. They should not be brought in contact with adult convicts, and their place of confinement should not be in the neighborhood of an adult prison.

#### SEC. 49. VIEWS OF MR. OTTERSON.

Ira Ottersson, Superintendent of the New Jersey State Reform School, in a letter to the Commission, dated July 10, 1886, says:

Juvenile delinquents should be cared for in State reformatories on the open or family plan; the families not too large—from 30 to 40 for boys; 20 to 30 (or better, 10 to 20), for girls. These should be officered by a high-minded Christian man and wife. A definite number of hours each day should be devoted to active employment of some kind. The more the children can be interested in it the better. If a diversified system of labor can be provided for different days, so much the better; and to gain the attention and incite the interest in the work a reward should be given. Some part of each day should be set aside for schooling in the elementary branches of English education. The children should be trusted and made to feel that dependence was placed upon them, and that they should have confidence in themselves, in order to receive the confidence of others; and just so soon as they can be trusted, as established in good principles, they should be released upon parole, by indenture, to some good families, unless their own homes are known to be good in character; and they should be regularly visited, and obliged to report to the institution, and public sentiment raised to the point of sympathizing with and aiding them, and not to look upon them as ex-convicts in any sense.

#### SEC. 50. PLAN OF SUCH SCHOOL.

Assuming then, that it is essential in our State to have some particular institution in which the young offender may be confined, cared for, and trained to habits of honesty and industry, the question arises, how should this school be conducted, and on what plan should it be based. Concerning the character of these schools, there is the well defined distinction of those conducted on the family plan and those conducted on the congregate system. There are many objections to the institutional life. It is impossible to obtain the family training and discipline that the young criminal so greatly needs. It is impossible also to make that close separation between the different classes of the inmates, which is so necessary to attain the best results. Then again, there is a spirit of dependence in all large institutions. The inmates receive the food and raiment from the State without giving any adequate return. The main object of these institutions, however, is to drill the youth to depend upon himself, to teach him that he must earn his own living in the world, and to supply him with the training that will in a measure enable him to do it.

For these reasons, we have concluded after careful consideration, that an institution of this kind should be conducted on what is commonly called the family or cottage plan. There are several institutions conducted in this way in this country.

#### SEC. 51. OHIO COMMISSION.

In 1856 a Commission was appointed by the Legislature of Ohio to visit the reform schools of the country, and to make a report for the plan of a reform school for that State. The Commission emphatically recommended the family plan, and a tract of 1,170 acres of land was purchased. The school was founded on the idea that the best place to bring up children is in an intelligent, well regulated Christian home, and that the life of a boy at a reform school should be as similar as possible to a life passed in a good home. Love for labor should be diligently cultivated, and each should have the will and the power to earn an honest living, both while he is an inmate of the institution, and when he leaves to commence his life in the active busy world. There should be suitable mental instruction, and the inmates should be taught that obedience and duty will meet with their reward, and that crime must and will meet with an adequate penalty.

#### SEC. 52. REMARKS OF MR. CHIDLAW ON OHIO REFORM SCHOOL.

Concerning the Reform School of Ohio, B. W. Childlaw, one of the Commissioners of the school, in a paper read before the National Congress of Penitentiary and Reformatory Discipline, in 1870, said:

The new comer arrives in charge of a Sheriff or deputy, sometimes in irons, and frequently clothed in filthy rags. Yesterday he was the inmate of a gloomy, miserable county jail, under the demoralizing and degrading tuition of hardened, reckless criminals; to-day he greets a village of farm buildings and large dwellings, beautiful lawns, fields, orchards, and gardens. He looks in vain for frowning massive walls and grated windows; the dread of narrow cells and prison life is removed at once, and the poor boy has hope. His heart is touched in the right place. His first impressions are always favorable. If a visit to the wash-room and clothes-press is necessary, the elder brother on duty in the office takes him there, and speedily a great outward change in his personal appearance is wrought. The poor fellow feels this, and takes another step towards a better life. Then the elder brother takes him by the hand, and with words of kindness shows him his future home. By a lad "always kicked about," such attentions are appreciated, and he feels at once that he is in the hands of friends who will do him good. (We have no classification of the boys; vacancy in the household determines the location of the new boy.) In the family where he is placed he is received and treated as a brother. Outside, bad and dangerous boys were his best friends and companions; good boys avoided him. In his new home things are changed. The best boys in the family feel an interest in his welfare, and are ready to do him any good service in their power. In a short time, accustomed to the routine of duty, the boy becomes attached to his elder brother, to his associates, and his home, and the blessed work of reclaiming the wanderer is hopefully progressing.

The method of training the boys will be presented in a brief outline of our daily routine, and this will illustrate our principles and their application. We combine, as far as possible, all the elements which will instruct the boy in his daily duty and secure order, promptness, and efficiency.

At 6 A. M., the boys eat breakfast in a common dining-room. At the table they behave with great propriety, and when all are seated, they unite in asking the Divine blessing on their food, after which they partake of it with cheerfulness. After breakfast, led by one of the elder brothers, they spend a short time in devotional exercises, reading the Scriptures, and prayer, in which all unite.

Then they move in order to the lawn and form a line, and are detailed in the duties of the forenoon. The school boys are ordered to move, and the line is thereby reduced one half. The shop, house, and team boys are next relieved, and proceed to their allotted duties. Those who are to be employed in field and garden work go first to the tool-house, where they are furnished with such implements as they require to perform the labor assigned. These several divisions are in charge of an elder brother, who aids and directs their labor, and carefully observes their conduct.

At 11:30 A. M. the schools are dismissed, and the working forces repair to their family building for ablution and relaxation till the dinner bell invites them to their noon meal. After dinner, and an hour of rest, the line is again formed and the details for school and field made as in the morning. The boys that work in the forenoon now go to school, and those who were in school in the forenoon are at work in the afternoon.

At 5 P. M. the labors of the day are closed and the schools dismissed. Then comes play-time, the joy and cheer of all hearts, each family on its own playground, presenting as rollicking, cheerful, vigorous a set of boys as the land can furnish. This kind of enjoyment,



mixed up with the hard work and close study of the day, is certainly reformatory, and helps us to make good men out of bad boys.

In the evening each family (at present seven in number) meet in their own school room. The first hour is spent, under the supervision of their elder brother, in a moral review of their conduct through the day. Each boy, in the presence of his associates, makes a statement of his conduct, good or bad, during the day. His thoughtfulness, truth, and honesty are called into requisition. A short memory, a perversion of facts, or an error in statement will be at once recognized by those who witnessed his conduct, and condemned by the righteous judgment of his peers and the elder brother.

### SEC. 53. SAME MATTER CONTINUED.

These are favorable opportunities, when judiciously employed, to root out the seeds of evil and plant those of good. By affectionate and wise appeals to the heart and conscience of the erring, the sensibilities are reached, and the sentiment of duty invigorated. Those who struggle manfully against the dominion of passion and the habits of sin that war against the soul are encouraged and strengthened, and those that are blameless are recognized and approved. This is an interesting hour and a very useful service. Until bedtime, at 9 P. M., the boys have a free and easy time, in company with the elder brother, conversing, reading, singing, and amusing themselves as best they can in a quiet, pleasant way. Their dormitory is large and well ventilated, with comfortable, clean beds. Arrived at the head of his bed, each boy kneels and spends a few moments in silent prayer. This voluntary and beautiful service is very impressive, and certainly beneficial in a household of 40 to 50 impressible boys. The elder brother is expected to enter into intimate and endearing relations with each boy in his family; to know his troubles, difficulties, struggles, and triumphs. He operates on the individual member, and not with the family *en masse*. He can intelligently and judiciously deal with each boy in his charge. Ministering to the circumstances of each particular case, he seldom fails to win the boy from evil and help him to do well.

Each boy is instructed and encouraged to do all that he can do for himself. He is impressed with the fact that all that others may do for his reformation will be unavailing unless he himself enters heartily and resolutely and earnestly into the work; thus the boy becomes deeply interested in and devoted to the work of self-rescue and self-improvement. He is intelligently aroused, and his energies properly directed to do all that he can to recover himself from the power of evil thoughts and wicked deeds. A score of boys in a family of 40, thus aroused and engaged will exert a powerful influence for good on each other.

The Ohio system—the family plan for reforming and educating bad boys—is no longer an experiment. Its success has been attested during thirteen years, and the results have been satisfactory in the hopeful reformation of an overwhelming proportion of the inmates therein detained. We have not the means of knowing the history of every boy that has been discharged, but from trustworthy information, from letters received from the boys or their employers, and from personal knowledge, we feel confident that 75 out of 100 are doing well. They have been prevented from falling into the dependent or dangerous classes, and are now a blessing to the State and an honor to the institution that saved them. The discharge of a boy by indenture, or to the care of relatives, or on his own account, is always a matter of tender solicitude and deep anxiety. Many, when they leave us, are welcomed to a safe, good home, with all its virtuous incentives and encouragements, where kind, sheltering arms will protect them. Others have no such greeting; the chill of disappointment, the sorrow of discouragement, is their lot. Some, thus circumstanced, are strong in their principles and correct habits, and in the hour of trial stand unscathed. Others are weak in will and power to resist; they fail for the want of opportunity and sympathy; they go down, because there is none to help them. A few we never hear from; we have no clue to their failure or success, their weal or woe.

The holding of our boys without high walls or armed police is another result of our system which we present with confidence. Our records will show that our inmates, nearly twelve hundred in number, were charged with and sent to the institution for miscellaneous or flagrant crimes. They are held by the power of a good home, kind treatment, constant employment, genial relaxation, and vigilant oversight. They are made to feel that they are loved and trusted; therefore they are contented and cheerful, and, like good boys, stay at home with their friends, and do their duty pleasantly; cords of loving confidence thrown around their hearts are our chains. The force that holds a boy in his home outside is the power that prevents escapes from our institution. For eleven years we have sent daily from one to six boys with teams to Lancaster, a distance of six miles, not one of whom ever betrayed our confidence by escaping, and we never heard any complaints of their bad conduct. Indeed, our neighbors always commend the behavior and gentlemanly bearing of our boys. A serious mutiny or conspiracy to escape never occurred. Sometimes plans have been laid by one or two boys, but the faithfulness of their trustworthy comrades, or the watchful eye of the elder brother, detected the beginning of evil and frustrated the plan. The tone of social moral feeling in the family, the sense of honor and duty cherished by the boys, and the ordinary discipline of the institution are reliable securities that escapes will not take place.

### SEC. 54. A NAUTICAL SCHOOL.

It has been the practice of all maritime nations to encourage instruction in navigation and practical seamanship. In Europe there are many nautical schools, most of which are conducted in buildings on shore. In England there are several ship reformatories. In the United States some schools of this kind have been established. The City of Baltimore, in 1857, established a floating school, having purchased a ship at an expense of \$11,000. This school was put on the same footing as her public schools. And in Massachusetts there is also a school of this kind.

### SEC. 55. ADVANTAGES AND DISADVANTAGES.

A school of this kind has its advantages and its disadvantages. It is in one sense expensive, because it is difficult to find remunerative labor for those confined. And then, it limits the inmates to but one trade or employment. But it is one of the best places that can be provided for the promotion of discipline. There are many minor positions in which the boys may be placed requiring faithfulness and promptness. All the qualities that command success in this world can be as well if not better cultivated on shipboard than on land. The liking for the sea is natural to a great many of the uncared for children of our cities. By placing them in a nautical school this natural inclination is satisfied, and all the best qualities of the boy may be developed, because he likes the labor in which he is engaged. The pursuits followed are healthy, and, from a sanitary point of view, all that is said about a nautical school must be the language of commendation.

### SEC. 56. IMPORTANCE TO CALIFORNIA.

California must be to a great extent a commercial State. We ought to command the trade of the Orient as well as that of South America. Perhaps Alaska will open avenues to us of which we do not now dream. There is room on this continent for one large port in the East and for another in the West. The trade that will be ours should be thoroughly under our control. American seamen should man the vessels. These and other considerations lead us to look with favor upon the establishment, at some time in the future, of a nautical school in which many of our boys would find pleasant and profitable employment.

### SEC. 57. VIEWS OF COMMISSION.

We do not recommend this as essential to our prison system, but feel convinced that a school of this kind, if inaugurated and properly managed, would secure the best results not only to the inmates but to the State itself. A school of this character was once in existence in this State, but we have been unable to learn exactly what produced its failure. But we believe that under proper management such a school would be successful.

### SEC. 58. REFORMATORIES FOR GIRLS.

In a true and philosophical penal system there should be a separate reformatory for girls, as well as for boys. Society does not look upon the woman who has lapsed from the path of virtue with the same feeling as it does upon the male offender. When a girl has once departed from recti-

tude, all the elements by which she is surrounded unite to hasten her on in her downward course. To the young man society in general, on proof or evidence of reformation, is willing to extend a helping hand. But the girl with the mark of sin on her brow is denied admittance to those circles in which alone she can find good and virtuous friends. It is known to many that in our cities a large number of female children have been initiated into the ways of vice. It is, under the present condition of affairs, almost impossible to deal with this class. They have been forced into the life which they lead from want of parental care and from exposure to evil associations. It is fair to assume that by proper means a large proportion of this class can be saved and made good and virtuous wives and mothers. Questions of this kind are, in California, now forcing themselves upon us, and we must deal with them as other States have done. We are now, in this State, almost in the same condition as the people of the East. It is easy of demonstration that the institutions in the Eastern States for the care of girls have done and are doing a vast amount of good. It may be that we cannot do all that we ought to do at once in our State. It requires time to accomplish any great good. But we feel satisfied that the time is not far distant when the people of this State will feel it obligatory upon them to provide in some manner for the depraved and criminal girls. We believe that the system that should be pursued with reference to them is the family system, and in support of our views we submit the following from Rev. Marcus Ames, who in 1870 occupied the position of Superintendent and Chaplain of the State Industrial School at Lancaster, Massachusetts.

#### SEC. 59. REMARKS OF REV. MR. AMES.

But how shall these reformatories be conducted? The *family* system seems to commend itself as the best method, both from general principles and from observation and experience. Divine wisdom in the very constitution of society, as well as by its written law, has indicated *home*, or the nearest approach to it, as the best agency for training and reforming children. Children need, for their training and happy development, morally as well as physically, a degree of liberty which shall allow the free play of their nature and capabilities in the unrestrained intercourse of parent and child, and of child with child, in work and play, and the social enjoyments that cannot be obtained elsewhere.

Individual freedom of action, under judicious supervision, is very desirable as preparatory to future self-reliance and self-support. A system, therefore, which requires *uniformity*, which does not allow the free play of all the activities, and which does not throw each upon her own resources and the exercise of individual judgment and choice, under judicious guidance, will not as well prepare a girl to be returned upon society and to act upon her own responsibility amid temptations. As the inmates of our penal and correctional institutions are not prepared for the sudden transition from close imprisonment to absolute freedom, so children and youth are not fitted for unrestricted liberty without a previous preparation by the exercise of judgment, choice, and self-restraint, while under the guidance of a superior mind.

#### SEC. 60. CONTINUED.

Again, the family system affords opportunity for cultivating a spirit of self-denial, and of sympathy with, and interest and fellow feeling for each other. It affords opportunity for more complete usefulness hereafter, in being helpful in various departments of household labor, in *little* services. The family system affords opportunity for direct individual contact, and that continuously, with intelligent, cultivated, refined, christian minds, at an age most favorable for reforming and molding the character. Who considers the power of a single superior intellect over a community will not readily perceive the great value of a system which admits and requires the continued presence of women of the character above described. If the proverbs, "like begets like," and "as is the mother so is the daughter," must be admitted to be true, so must that system acknowledged to be preferable which admits of the most frequent and intimate intercourse with the molding and transforming power; and, in this respect, the family system is evidently superior to any other.

Another advantage of the family system is the opportunity afforded by it for the adaptation not only of instruction, but also of corrective and disciplinary measures generally, to the disposition, habits, and circumstances of each individual, as occasions may arise. Every parent knows that correction and discipline, imperatively demanded for one child, would prove positively injurious to another of different temperament and disposition. If this be true of an ordinary family, where the children are of the same flesh and blood and

of similar inherited tendencies, and are subjected to the same early training and home atmosphere, how evident is the necessity for this individual adaptation of corrective discipline to girls, who must necessarily exhibit a wide diversity of natural disposition and traits of character, inherited tendencies, and early training, or lack of training. Correction and discipline cannot be apportioned to the children of a reformatory as rations are to an army. Rather, as the physician deals not out to every patient medicine uniform in quality and degree, but adapts it to each according to constitution and present symptoms, so in these *moral* hospitals must the constitution, tendencies, habits, and present symptoms, or varying moods and inclinations, from time to time, of each girl be considered, and govern the treatment. Our experience in every house, year by year, adds weight to this feature in our management. A system of rigid uniformity we have felt would prove positively disastrous in some cases, whereas a departure from our ordinary course, as occasion seemed to require it, has proved not only salutary, but, we believe, saving.

Miss Mary Carpenter, of Bristol, England, that wise and veteran worker in the reformation of girls, in a conversation with the writer upon this subject, remarked that she had often found that her new and experienced teachers supposed that the ordinary discipline and treatment were securing a reform, when she found, by personal contact and close observation, that certain girls who were wholly deceptive and hypocritical, had a fair exterior, and, under the general mode of discipline, were going on cherishing heart-sins, which, when opportunity presented, would develop into outward and great misconduct and ruin; but, by her direct instruction and peculiar discipline, seeking to bring them to a consciousness of their wrong state, she had led them to humility and true reform, whereas by a mere general administration of discipline, she would have passed over tendencies that would have carried them on in a course of sin and vice.

#### SEC. 61. CONTINUED.

Again, opportunity is afforded by the small number of a family for the formation of a higher tone of opinion and sentiment concerning right and wrong. The matron can more readily influence and bring into sympathy with her in thought and feeling a small than a large number, and thus create a public sentiment in the family, not only in regard to its laws and life among them, but upon subjects generally, and upon the ordinary duties, relations, and practices of life. It is evident that you can bring into sympathy with yourself in thought, feeling, and action, a group of 6 or 30 more readily than of 100 or 300, and we all well know that the restraining, enlightening, and reforming influence of public opinion, of the circle in which we move, is powerful, and thus, by a residence of months or years under the influence of such an elevated public opinion, the girls are not only enlightened as to right and wrong, but are themselves drawn into sympathy with the right for its practice as they go out into the strifes, turmoils, and activities of life. The public opinion of an institution, whatever it may be, will leave its impress upon the inmates. A student from a given school or college will afford no doubtful indication of the tone of public sentiment and morals in that institution. The character and life will accord greatly with that public opinion. At one time such was the public opinion among the inmates of one of our reformatories that a sadly large percentage, after their discharge, entered upon a course of crime and became inmates of the State Prison.

#### SEC. 62. REPORT OF HON. A. E. ELMORE. CONDUCT OF REFORMATORIES.

For the purpose of showing some opinions on how reformatories should be conducted, we call attention to the report of Hon. A. E. Elmore, Chairman of Committee on the Organization and Management of Reformatories and Houses of Refuge, made before the eleventh annual session of the National Conference of Charities and Correction, at St. Louis, in October, 1884. He submitted a number of questions to various people. The following were the questions and the substance of the answers:

1. *Do you prefer the cottage or congregate plan?* A general preference was expressed for the cottage plan of constructing the buildings, and the family system of management, or some modification thereof. No one favored the congregate system. Four favored a combination of both—a large, central building, with detached cottages for the better class of inmates. Twelve favored the cottage plan, and two expressed no preference.

2. *Should the same institution receive both sexes?* Twelve favored separate institutions for each sex; five would allow both in the same institution, but in absolutely separate apartments, and one favored having both sexes in the same institution, and did not qualify this choice by further remark.

3. *Should vagrant and homeless children, not convicted of crime, be sent to such institutions?* Ten favored, six opposed, and two were indifferent.

4. *What is the best age at which children should be committed?* Opinions varied very much: from 6 to 12; a plurality favoring 10 years.



5. *What should be the highest age?* A plurality favored 16, but others said from 14 to 18.

6. *What is the highest age to which they should be retained?* A large majority favored 21 years, but most of them with qualifications.

7. *Under any circumstances should their labor be let by contract?* To this question, the response was practically in the negative. The only replies favoring it were from two Superintendents of institutions where they have such labor, and they gave it support only when closely restricted and watched.

8. *Is it feasible to teach them trades?* Eleven gave affirmative, six negative replies—most of them with qualifications; and one was undecided.

9. *Should their education go beyond the common school branches?* Twelve said no, three aye; and three were on the affirmative side of the question, with many qualifications.

10. *Should they be graded on some system of marks or credits?* One only was opposed to the system of grading by marks. A number expressed themselves as opposed to a too rigid and technical carrying out of the system, and a great diversity of views as to the particular manner of applying such grades was entertained. The one opposed to the system is not an officer or trustee of a reformatory.

11. *Should such marks be upon conduct, studies, or industries, or all of them?* Nearly all favored basing them on the combination of conduct, studies, and industries, though upon conduct more particularly.

12. *Should corporal punishment be inflicted?* Three were opposed to corporal punishment, while fifteen were in favor, but under great limitations and restrictions, most of them reserving that power to the Superintendent exclusively, or by his direction; and others would doubtless have so expressed themselves, had the question admitted other than the shortest reply.

### SEC. 63. REMARKS OF MR. ELMORE.

Mr. Elmore then says:

These answers were from representative persons, fairly expressing the opinions and practice of the juvenile reformatories of the United States, and the following may be formulated as a brief statement thereof. They favor the cottage system of construction, and some modification of the family plan of management; a complete separation of the sexes—in separate institutions if possible. Childhood is the time, between 9 and 16, for sending inmates to these institutions; and great discretion and latitude are to be used as to the length of time they are to be retained, the maximum being until their legal majority. On the question of placing vagrant and incorrigible children in reformatories with children convicted of crime, the opinions are nearly divided, a bare majority in favor.

The contract system of labor in reformatories is condemned emphatically. The feasibility of teaching trades is by many doubted. Its desirability is very general. If the State or municipality gives each inmate of a reformatory a good common school education, it has done, in that respect, its whole duty. Such is the opinion of nearly all who responded to the question. A system of marks or credits for conduct, studies, and industry is favored; and the infliction of corporal punishment in *extreme cases* is approved, but under such safeguards as will render its abuse improbable if not impossible.

### SEC. 64. VIEWS OF HON. WILLIAM P. LELCHWORTH.

Hon. William P. Leitchworth, President of the New York State Board of Charities, and ex-President of the Eleventh National Conference of Charities and Correction, said, in an address at the Thirteenth National Conference of Charities and Correction, held at St. Paul in July of this year, 1886, on the subject of juvenile delinquents:

In considering juvenile delinquency we come to the more difficult part of our subject. While conceding at the outset that there are many excellencies in our system of dealing with juvenile delinquents, and that we have many admirable institutions for their treatment, I strongly believe, that, with the present intelligence shown in management, under a different system, it would be possible to attain still better results. I therefore venture to point out what I deem to be some existing defects, and, also, to hazard the presentation of a plan which is the outgrowth of close study of the views of specialists in reformatory work in different countries, and of extended personal observation.

It has long been painfully evident to me that there was a lack of discrimination in sending young persons to reformatories. We find in the same establishment the truant from school; the homeless child, committed as a vagrant; the disobedient and wayward, committed as disorderly; the petty thief, and the felon. Generally some classification is attempted in the institution, either by age or by character; but this does not effect the end sought. The different classes meet at religious services, at entertainments, and on other occasions, and soon become known to each other. It matters little what name is given to the institution—whether House of Refuge, Industrial School, Reform School—or

if the name is changed occasionally. Receiving felons, it soon becomes known as a criminal institution, and the stigma of crime is affixed to the name of all who are committed to it. The character of the institution is formed from its most hardened class. The busy world does not ask of the graduate for what offense he was committed. It is sufficient to know that he is a "House of Refuge boy," and he goes out into the world with this ugly brand upon him, which he soon finds must be hidden before he can hope to rise. Thus a great wrong is inflicted upon the innocent—the greater because of their helplessness—a wrong that should call forth a protest from every generous heart. Who among us, looking with pride at his family escutcheon, and cherishing reverently the names of an honored ancestry, would not hazard his life to defend an inheritance so dear? Take home the thought that one of us, through the poverty or death of honest parents, might have been forced into association with felons, and an unjust official record made against us—a blot that must rest upon the name of succeeding generations. Hardened criminal youth should be separately treated in institutions specially adapted to their reformation; and other provision should be made for children simply unfortunate.

The plan of training girls in the same institution with boys, although in a distinct department, I think a serious mistake. They should be in a separate institution, specially organized for the work, the internal affairs of which should be directed by ladies, constituting a part, if not the whole, of the Board of Managers. Boards of Trustees sometimes appoint committees of women to aid them in the girls' department, but usually the powers conferred are only advisory. I think that in all juvenile reformatory work women should be permitted to participate as equals, and that the Boards of all our reform schools for boys should be in part composed of women; for certainly we need here the experience of the mother. We need her knowledge of domestic affairs, her tact in the school, her gentleness in the hospital, and her exalted purity in moral training.

A fault in some of our reform schools is their great size. In the congregating of large numbers, individuality is lost. It is found inconvenient to call a child by name. Instead of Richard, he is known by No. 599. This fixes his place at the table, in the school, and the dormitory. He becomes part of a great machine, which operates without his volition. The sympathy and confidence between guardian and ward are necessarily reduced, by the heterogeneous multitude, to an influence comparable to that of the affection expressed by abstract numbers. Cut off from this elevating stimulus in his teachers, the youth seeks it in those who, like himself, need reforming. These excessive aggregations are overcome to a great extent in the cottage plan; but even the subdivision of a large establishment into cottage homes is considered by many less efficient than the small institution. It has been emphatically asserted by the head of one of the largest juvenile reformatories in the world, that "a reform school should never receive more than one hundred boys."

There is a great misconception in the public mind respecting the true purpose of reform schools. "How can they be conducted with the least expense?" "How can the largest revenue be derived from the labor of the children?" These are the usual questions respecting their management. But they are questions that we do not apply to our public schools. To support the educational system of the country, according to the last published report of the Bureau of Education, there was expended in the various States and Territories during the year ending June 30, 1884, the sum of \$103,949,528. We hear no complaint that the object was not worthy this expenditure. We hear nothing said about obtaining revenue from the labor of school children. We hear something of the introduction of technical education into the public schools, but no one looks for a pecuniary return from this project; and yet it is as important that the bad boy who may burden the State as a future criminal should be reformed and saved as that the good boy should be educated. In carrying on this work, we lose sight of the real issue when seeking to do it cheaply. Those methods that bring the best results, however expensive, are in the line of true economy. But in choosing methods we should consider that good discipline, and even education, are only means, not ends. The aim first, last, and always should be, to make the subject a good and useful citizen.

In the plan referred to for dealing with juvenile delinquency, prevention as a governing principle, and the reformation of youth, as far as practicable, outside of the institution rather than within it, should be kept steadily in view. A boy's conduct may be good while he remains in an institution where he is removed from the temptations that made him an offender. Place him in his former surroundings, and he may be as bad as before; but if he is truly reformed in the midst of adverse influences, he gains that moral strength which makes his reform permanent.

The plan would include a modification of the Massachusetts State Agency system of dealing with juvenile offenders, as also of the Michigan system of county visitors as applied to dependent children. A central unpaid supervising Board, independent of political influence, should direct the work, with power to appoint a paid State agent, and an unsalaried agent in every county, who should be one of a committee of visitors likewise appointed by such Board. It should have jurisdiction over all classes of children brought before the Courts with a view to restraint or correction. The local committee should consist of persons residing in different parts of the county, who would look after the delinquent children that had been brought under State supervision, and report respecting them, from time to time, to the county agent, who should likewise report to the State Board through the State agent. There are now, in various States and countries, societies for the Prevention of Cruelty to Children. So far as I can learn, these have been of great benefit, having invariably won the confidence of the Courts by their impartial course, and proved valuable in protecting the helpless and in furthering the aims of justice. Where

these societies exist, they might, in the discretion of the State Board, assume the functions of a local committee, the superintendent of the society acting as the county agent.

Before trial, at least before sentence is passed, the county agent should be notified, in order that he may be present at the trial to protect the interests of the child. By a conference of the agent with parents and child, it has frequently occurred in Massachusetts that a pledge for good behavior has been given upon thorough repentance, the charge withdrawn, and the delinquent saved from an official record of crime, and without further expense to the State. Not infrequently it was found that the parents were at fault, either too lax or too severe, and moderate counsel given in a friendly spirit set matters right. The parents, by being reminded of the importance of saving their family name from a criminal record, were inspired by a clearer sense of duty, and the offender, warned of his danger, under a pledge to the agent of future good behavior, began at once to lead a better life. The agent should be empowered to remove a delinquent from evil associations and provide for him elsewhere, under family care. The Court should be empowered, upon reasonable grounds, to suspend sentence at the request of the agent to give the delinquent an opportunity to reform under promise of good behavior, and if a later report of the agent is favorable, to continue suspension, and finally, if reform is effected, to omit further action in the case. One favorable result of this course would be the preventing of the commitment of children to houses of refuge on frivolous charges, trumped up solely for the purpose of ridding the parent or guardian of their support.

There is in every large village, as well as in our cities, a class of lawless, untaught boys, and wayward girls that should be brought under restraint, and if need be, correction—a class which is a prolific source of pauperism and crime. Could the leaders of these youthful gangs in some simple way be placed under legal supervision or restraint and a wholesome respect for the law implanted in their young minds, the saving influence would extend not only to the child under treatment, but to his associates, and a dangerous evil would be corrected. If legally placed under the control of the county agent, he could direct the attention of members of the local committee to such cases, and they might influence the delinquent to reform, and thus be able, by a favorable report, to avert further proceedings. The ladies of these committees may be particularly useful to a class of girls, who, deprived of salutary home influences and surrounded by temptations and inducements to sin, have but few incentives to do well. Distrusted by good people and deluded by the bad, they need the counsel, encouragement, and reclaiming influence of the benevolent.

As showing what is possible under a State agency system, it may be stated that, between July 17, 1869, and October 1, 1878, the Massachusetts agency attended hearings before the Courts of 17,136 complaints against juvenile offenders, besides performing an extended work in visitation, seeking places for children, placing them out, etc. Of the 17,136 brought before the Courts, 2,945 were discharged, 5,340 paid money penalties, 4,392 were placed on probation, and 835 cases were disposed of by placing them on file, or by indefinitely continuing them, or by returning the offenders to institutions where they had once been. During this period it was found necessary to send only 1,088 of the whole number to the State Reform School, 205 to the State Nautical School, and but 192 to penal institutions.

In making an examination a few years since of the methods of dealing with truants in the principal cities of England, Ireland, and Scotland, I found that the School Board of Liverpool had established, for the correction of obstinate cases of truancy, a house of detention a few miles from the city, in a secluded situation, and easily reached by railway. It is a plain, two-story brick building, with living accommodations for officers, teachers, and boys under correction. The small rooms are well lighted by a window, placed so high that one can see only the sky through it. The rooms have no embellishments and only the simplest furniture. Boys whom the agent of the school board cannot prevail upon to attend school are sent to the house of detention for terms of from five to not more than thirty days. They are there kept under a solitary system and subjected to the severest training compatible with their years and the preservation of their health. Food is taken to their rooms. They are marched in single file to the shops, where they work in small squads behind rows of benches, each boy facing the officer in charge. No recreation except out-door calisthenics is permitted. The rules forbid conversation or any kind of intercourse between the boys. This punishment having been administered once, it is rarely found necessary to inflict it again. A second term is, however, longer than the first, but shorter than the third, beyond which this kind of discipline is not continued. After having been sent a third time to the house of detention, the delinquent, if justly arrested for any cause, is considered a fit subject for a long commitment to a reformatory school. In this brief but sharp and severe punishment, there is no lasting stigma upon the character nor injury to the person, nor is there danger of moral contamination from evil associates. While the remedy is inexpensive, it is effective, the experience imparting a permanent dread of corrective confinement.

Similar houses for the correction of juvenile delinquency might be established near our large cities, and prove useful in materially lessening commitments to our houses of refuge and reform schools, thus relieving them of much of their expensively conducted work. Under the extreme limit of sentence, thirty days, twenty-four boys could be dealt with here at no greater expense than that of one boy maintained in a house of refuge for two years, and with much better prospects of reformation. In case the conduct of a boy could not be corrected by the influence of the county agent or by holding him under suspended sentence or in family care, he might be committed for a short term to a house of

detention. If one or two repetitions of this kind of punishment should not prove effectual, longer discipline in the reform school should be tried. It is true that an early offense is sometimes so serious as to require direct commitment to a reformatory school or other prolonged detention under thorough training; but usually a life of crime is approached by progressive steps. The knowledge that there existed an ever-present and vigilant power, watchful over their conduct, would in itself, in many cases, be sufficient to arrest young offenders in a vicious career without calling active corrective measures into requisition.

The adoption of preventive measures as suggested would make it necessary to commit but few to the reform school; and in the plan proposed this institution should be located on a farm removed some distance from the city, and organized and controlled, when practicable, by private benevolence. It should receive aid from the State, city, or county, but not sufficient to maintain it, so that public sympathy would be kept alive in the reformatory work. Parents, too, should be required to contribute, in accordance with their means, towards the support of their children in these institutions, in order that they may feel a due share of responsibility.

These schools should be small, such having proved the most successful. They should be examined by a central supervising Board, and certified to as suitable for the care and training of delinquents before being permitted to receive inmates; and this examination should be repeated, and the certificate renewed each year, as a condition to continuance. Should peculiar circumstances make it desirable that the institution receive more than one hundred inmates, the cottage plan should be adopted.

The internal system of the reformatory school should be, as nearly as practicable, that of the family, with its refining and elevating influences; while the awakening of the conscience and the inculcation of religious principles should be primary aims. Perhaps a boy enters the school feeling that the hand of every man is against him, and with revenge in his heart; but let him there find a corps of just but merciful guides, ready to teach him and help him and love him, and it is reasonable to expect that he will soon be actuated by better feelings and nobler resolves. The school should be thorough in all its methods, and aim to impart a plain education, and also give instruction in mechanical drawing.

Every boy should be instructed in some useful trade or occupation, and his wishes consulted in selecting it. Trades should be taught under the Russian system of technologic training whereby a boy, as Mr. Auchmuty in his trade school in New York has demonstrated, may be taught plumbing, carpentering, stone and bricklaying, plastering, and other useful handicrafts in from three to four months; and when so taught, although not having the expertness that comes with practice, is a better mechanic than though he had spent five years in acquiring a trade in the old way, because he has learned those principles of mechanics and chemistry applicable to his trade. Such as prefer farming and gardening, so far as season and weather permit, should be employed and instructed in these pursuits. Every boy should likewise be taught, as far as practicable, the many little arts, too frequently neglected in the training of youth, which are applicable to every industry.

Courts should, as now, commit children under 16 years of age, that require such restraint, to the guardianship of reform schools during their minority. At least six of the first months should be spent in the institution. After this time, if the offender is thoroughly repentant, he should be placed in a family, subject to recall. Provision should be made for the transfer of exceptional cases to institutions like the New York State Reformatory at Elmira, or to other appropriate places for the incorrigible. I once expressed surprise to the Superintendent of an English reform school, which had no barred windows nor bolts nor surrounding walls, that the boys, who were working in a large vegetable garden, were allowed such freedom. He pointed to the spire of a building rising through the green foliage a few miles distant, and said: "That is a penitentiary. Every boy here knows that we have power to transfer him there, where he will have harder fare and be kept at work under a solitary system."

The whole theory of this plan, applicable to children under 16 years of age, should be in conformity to the principle upon which a loving Savior deals with us—forgiveness upon true repentance. However depraved we may be, our heavenly Father only asks us to repent, and he receives us with open arms. This is what we should do with an erring child. To inflict punishment beyond this is vindictive, and must tend to harden the moral nature. I venture to say that I think there are in some of our houses of refuge and reform schools as many as 50 or 75 per cent of children that never should have been sent there, and that others properly committed but turned out unimproved, could have been reformed if they had been put under guardianship outside when honestly repentant. In days of trial and humiliation, there comes a time when the heart yields its stubborn purpose, and the soul is filled with sorrowful regrets. In the case of young offenders, this may be made the occasion to shape the spiritual nature into grace and beauty; neglect the opportunity, and indifference and obduracy ensue, and we fail to save that which is of priceless value.

## SEC. 65. COMMISSION RECOMMENDS ESTABLISHMENT OF A REFORM SCHOOL.

It is a very difficult matter to frame an Act that will at first contain all that will appear on subsequent reflection as essential to the proper man-

agement of such a school. We believe that there ought to be two separate schools of this character in this State, one for boys and one for girls. But we do not insist upon this recommendation, knowing that all cannot be done at once.

We submit, in the chapter on proposed legislation, a bare outline for the government of such a school, hoping that when it is amended, as no doubt will be necessary, it will become a law, and that California shall take one step at least towards caring for that rising criminal and vicious class who may by proper influences be reformed, but who, if left to their own wild inclinations, will surely become professional criminals.

#### SEC. 66. SOME REMARKS OF DR. SCULLER.

In concluding this subject we deem it not inappropriate to call attention to some ideas of J. D. Sculler, M.D., Superintendent of State Reform School, Pontiac, Illinois. Says he:

Men and women who have never had any boys can always best tell how to save them. I have had some of my own, and a great many belonging to other people, and therefore should know very little about the subject. The plan was once tried of having men "ready made" without the boys. The man was such a failure that the experiment has never been repeated. Men are only overgrown boys, some of them hardly that. There are three classes about whom we naturally ask, "Can we save the boys?" The first class will be saved without much trouble or trying. The second class will be greatly benefited and improved by efforts in their behalf. The third class is *in articulo mortis*, morally dying or dead.

Members of the first class you may have read about in good little books, or it may be you may have met them in every-day life, if you have kept your eyes, and more particularly your ears, open. They never gave their mothers a headache since birth. Their thoughts and feelings and actions seem always modified by a halo of old age. Their whole character is rounded off. No ugly, scraggy scars deface their symmetrical reputation. The mold in which they were cast must have been perfect. They love to read the lives of saints and martyrs; they never smoke cigars, chew tobacco, or drink liquor; never were seen at a horse race or playing a game of baseball. Ninety per cent of this class die young. The remaining 10 per cent, if they grow to manhood, must be those critical, complaining, inoffensive old bachelors, who need no repentance.

The second class of boys is what, in esthetical society, might be called rather fast boys, with too much life, yet good-hearted boys. They will get into a fight now and then, with the result sometimes of a black eye. Some of them will even run off from school to see a horse-trot or to visit a circus, if they know that Jumbo or Barnum will be on exhibition. They will jump into the river to save a drowning kitten, and yet rob a bird's nest. This is the class whose eyes dance when they read "Jack, the Giant Killer," and wish they had his sword of sharpness and his cap of knowledge, that they might set free all the beautiful lady captives of all the Bluebeards in the world.

From this class come our best business men, our best teachers, and our best preachers. In fact, the stamina, the backbone, the fiber of the world are in it. The pushing, energetic, "no such word as fail" men—the man whose pocket is always open, and whose heart is ever softened by suffering, are from this class. Your heroes, who marched with unwavering step up to the loaded cannon's mouth and died with victory's shout on your battlefields; the men who, with disease on one hand and death on the other, but with the "good news" in their souls, have pierced the thickets of Africa and climbed Abyssinian mountains, to carry the bread of life to dying men and women, are from this second class. Sometimes a few of them drop down into the third class, and get into prison and disrepute. Somebody did not do his duty, or they might—they should have been saved.

Now we come to the third class—the boys who will make our criminals, who will be our law breakers; the boys who love the world, the flesh, and the devil. A few of them will get into the reform school, and the rest are good raw material from which to make politicians and criminal lawyers.

The boys who prowl the streets at midnight, whose hands are too soft for manual labor, who are too young and delicate to work, belong to this class. The streets at midnight and no work will damn the best boy that ever a mother nursed. These boys for whole nights will not be at home. They are very positive that the Principal of the public school is not fit to teach; and, as like produces like, the parents generally sympathize with their promising boys. These are boys who only attend Sabbath school about the time of picnics, and then they can attend all in town, if the hours are suitable. Solomon says you may "bray them in a mortar among wheat with a pestle," but you will only damage the wheat. These are the boys who hold truth to be such a precious jewel that they keep it locked up safely at home, and never carry it abroad with them; boys who can, on the street corners, curse and blaspheme their God as early in years as there are letters in their oaths; who can smoke, and chew, and drink; can push their caps on one

side, and leer at passers-by when only children; whose father is the "old man," and their mother the "old woman," or "old Sallie," and very often the "old woman" thinks "our Tim's awful smart;" boys who will strike their mothers when little more than out of their swaddling bands; who pore over those five-cent pollutions called novels; who think that Jack Sheppard, Dick Turpin, Claude Duval, and Jesse James are heroes of heroes; who think the *Newgate Calendar* the finest book ever published. These are the boys who make the thieves and criminals of society; who will fill our reformatories, our prisons, our jails, and penitentiaries. And some of them, when there, will commit to memory more verses of Scripture, show more genuine piety, and talk of that blessed word of God with more apparent zeal and earnestness than ever cloistered monk dreamed of, and who will stand on the scaffold with the noose in sight and feel as if they were martyrs, while reciting the most thrilling passages of some dreadful murder or murders they have committed, and who now would not take their freedom, if offered a pardon. They have peace and forgiveness—their sins are all washed away; and now they are only waiting to swing themselves into Paradise. I sometimes think that it would be a wonderful accession to Heaven, and a grateful relief to mother earth, if all the members of this class could be hanged when young. They are always converted before they are hanged. Is not such mockery enough to make the angels weep? I have read of one thief converted on the cross—that we should never despair—but only one, that you and I should not be presumptuous.

We have now diagnosed the three classes. What is the prognosis? The first class is out of danger; the second class fevered, but with careful nursing should get well; the third class almost past redemption, not very much hope.

#### SEC. 67. SAME MATTER CONTINUED.

Of the first class, we have nothing to say. All is well with them. Of the second class, we say they should be saved. Our Sunday schools, our public libraries, our social gatherings, our sacred songs, our preaching, are for such boys. To save them is the work of noble men and women all over the land. Our churches and Sunday schools should try to bring them in, cry to them to come in, press them in, draw them in by example as well as precept. When they are in, you should teach them that, when they think they are too big for the Sunday school, there is another school a little higher up—the house of God; and, God helping, they should be saved. You may not be able to make all of them saints, but you can make them honest, law-abiding men. From 20 to 30 per cent of this class will drop down into the third class. The rest are like clay in the potter's hands—they can be molded into the fashion of men.

This is the class where efforts for their salvation will return a rich harvest in the day when God makes up His jewels.

But we must be honest in our work. It will not do to preach to a boy meekness, and then get angry; or patience, and be petulant; or firmness, and be wavering like the wind; or honesty, and the next day cheat your neighbor in a trade; or faith, and yet take every step by sight alone; or total abstinence, while your breath smells of whisky. You may preach all these virtues and moral excellences to men, but you cannot do it successfully to boys. Their critical side is always uppermost; and their conclusions, drawn from their own premises, are always favorable to their own side of the case, without using the reason of maturer years.

You tell a boy he must walk in such and such a way, his actions must be on the square if he ever expects to be wise or strong or beautiful. Your lesson is ended, and you forget your own theories; but that boy watches, and sees the first step you take out of the road you pointed out to him. Your lesson has lost its power, and the boy has lost for you his respect. Boys are like women—think rapidly, come to conclusions quickly, and generally they are not far from right. Boys demand honest teaching, honest practice; otherwise they would better have none.

We now come to the third class. I have had some little experience with this class, and I am convinced, after no little thought, that the State should demand the guardianship of the children of all the parents who, either from their criminal proclivities or actual transgressions, are unfit to manage their children other than raise them as law-breakers or vagabonds. The State should take them when they are young enough to be susceptible to moral lessons, if there be any moral soil to plant on. A man found sowing thistle seed on another man's farm or scattering firebrands in a city should at once be punished. Yet this nation, founded on democracy, whose very existence depends on the virtue of its members, suffers a criminal class to grow, whose whole aim and object is to undermine the confidence of the community and to weaken the strength of the commonwealth. The State has a right in self-defense to seek the control and try to subdue all influences tending to weaken its powers; and the State, in trying to save itself, might be the means of saving many boys who otherwise would go to destruction.

The boys of this third class are not all from the criminal ranks. We find on examination that there may be, perhaps, 20 per cent from respectable and well regulated homes, 30 per cent from the careless, undisciplined, but not necessarily criminal, families, and 50 per cent from the criminal classes of society.

How are we to save them? For six thousand years that interrogation has stood practically unanswered. We can find as many theories from men and books for the social and moral redemption of this class as there are patent medicines for the cure of physical diseases, and experience proves that the one has about as much potency as the other. The criminal bred and born can, in my opinion, be cured only by stopping production.

## CHAPTER IV.

## INDETERMINATE SENTENCES.

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## SEC. 68. FIXED SENTENCES.

Under the system pursued in California, and with the exception of commitments to one institution in New York, in all the other States of the Union a person is sentenced to a fixed time of imprisonment. His time may be reduced by certain commutations allowed by law, his right to which is dependent on his good conduct and obedience to the rules and regulations of the prison. But the sentence still remains fixed.

## SEC. 69. OBJECTIONS TO THIS MODE.

Objection to this mode of sentencing prisoners has often been raised. In 1829, Archbishop Whately, of Dublin, offered the suggestion that a prisoner should be sentenced to perform a certain amount of work, instead of imprisonment for a specified length of time. The famous prison administrator, Alexander Maconochie, favored a system of compelling a prisoner to earn so many marks before he should be entitled to his liberation. It was his design to use marks as money, charging them for provisions and

supplies, and crediting them each day with a reasonable number of credits for each day's work performed.

## SEC. 70. INDETERMINATE SENTENCE.

The indeterminate sentence has strictly no minimum or maximum term of sentence. This system is somewhat like the ticket of leave system adopted in England, and in some respects different from it. In 1718 it was declared by an Act of Parliament that where convicts were sentenced to a term of imprisonment less than three years in duration, they should be transported to North America. But as no provision was made for their transportation, they were conveyed by masters of vessels who sold them to obtain their expenses. If the prisoner was able to pay the expenses of his transportation, he was liberated, on reimbursing the master of the vessel. When Australia was discovered, a new place was found to which criminals might be sent. When Australia began to acquire a free population, convicts were assigned to the citizens as laborers. But in 1837 this system of assignment was abandoned, and subsequently the ticket of leave system was adopted. The system at first enabled a person who had obtained a certificate to hire himself out, the Government reserving the right to withdraw his ticket in case of his misconduct. This system was afterwards modified, but conditional liberation remains, in its essential elements, practically unchanged.

Sir Walter Crofton, who became Chairman of the Directors of Convict Prisons in 1854, recommended, and himself carried out the plan of liberating no prisoner on ticket of leave until his fitness had been proved, and also recommended that his standing should be measured by a system of marks.

## SEC. 71. IN NEW YORK.

In New York in 1863, attention was called to the necessity of an intermediate prison to be conducted on the reformatory plan. In 1868 a Commission was appointed to select a site. The plan of organization proposed was that no person should be committed to the reformatory who was less than 16 nor more than 30 years of age, or who had previously been convicted of a felony; that the sentence should be until reformation, but not exceeding the maximum time fixed by law, and that the institution should be reformatory rather than penal in its character. The prisoners were to be employed on State account, and the contract system of labor was not to be pursued. The prisoners were to be classified and the duty of deciding when reformation had occurred was placed upon the Board of Managers. The Board was empowered to appoint an agent of discharged convicts.

This system has engaged a great deal of attention of your Commission. One of our members spent several days in examining the workings of this institution at Elmira.

This system has received much warm commendation. The experiment, if it may still be called an experiment, is undoubtedly a success. For the purpose of showing the views entertained abroad of this system, we call attention to observations of several persons conversant with prison management.

## SEC. 72. VIEWS OF GOVERNOR HOYT IN HIS MESSAGE.

Governor Hoyt, of Pennsylvania, said, in his message to the General Assembly, January 4, 1881:

What can be done for the very young up to the age of 16 years, who, by commitments by Courts and magistrates, have fallen into the hands of the law for various offenses has been well exemplified by the House of Refuge in Philadelphia, and the Pennsylvania Reform School at Morganza. Amid some controversy over these schools, and the methods at the bottom of them, it is too late now to question their value and service, although neither has yet reached an equipment necessary for the best work. The purpose of their existence and the aim of their managers is to rescue their inmates from the evil associations out of which they have come, and to reform them. Few of these waifs have responsible parentage or guardianship. They are quite sure to become State charges. The State, coöperating with private benefactors, proposes to return them, self-supporting, to society, under the best auspices the case will admit. Within the limits of the school they are molded, intellectually and morally, by competent, careful teachers, and instructed, trained, and drilled to some trade or industrial pursuit. The effort is to reproduce, within the inclosure, the exact condition of society they will encounter when they return to the world. This requires time, and the inmates are retained until the work is more or less completely done. The process goes upon the safe and correct assumption that it is impossible to reform the conduct of a child or man without first measurably reforming his nature. The scheme is no longer an experiment, as it has been faithfully worked out in England, France, Germany, and many of the States of our Union. This leads up to an extension of the general method, which, in the judgment of political economists of the very highest authority, promises the most beneficial results. This will include all the first offenders, except of the most brutal type, under the age, say, of 30 years. The purpose of the process is also to return them to society, with the preparation and discipline best fitted to enable them to earn an honest livelihood, permit them to retain their self-respect, and fit them to resume their places among their fellow men, if they so choose, without the brand of infamous punishment or penal servitude upon them. The aim and scope is to give the convict intellectual, moral, and industrial training, systematic habits, and definite purposes in a reformatory school, and not in a penitentiary; to afford him another chance in life; in short, to help him to help himself.

In the discretion of the Court rendering the sentence, defendants convicted of a first offense of such magnitude as to justify adequate imprisonment, and under the age of 30 years, are committed to such an indeterminate prison. They go without a determinate sentence, but cannot be held for a period longer than the maximum term fixed by law for the offense. Under a proper system of grades, and classes, and marks, every motive to shorten the period of detention is presented. That period will lie in the discretion of the proper officers of the institution. Positions in life are found for them, and they may then be conditionally discharged on parole, reporting from time to time thereafter their behavior and surroundings; or in default thereof, or if good conduct for a prescribed period, they may be liable to be returned to the institution. It has been found by experience that the prisoners thus discharged have been well received again by society, and in one of the largest institutions of this kind in our land, it is officially reported that less than 7 per cent of the number discharged have failed to maintain their promise of good conduct. I refer to the reformatory at Elmira, New York. The Acts creating it, and the practical management there carried out, are worthy of attention and study.

#### SEC. 73. VIEWS OF REV. CHAS. REYNOLDS.

Rev. Charles Reynolds, formerly Chaplain of the Albany Penitentiary, in a letter to the Commission, dated April 17, 1886, says:

Relative to your question about the indeterminate sentence as carried out in the Elmira Reformatory, in this State, I am quite favorably impressed with its workings, although the politicians, and those who aspire to get the place out of the hands of its present management, bring many forces to bear against the entire system. I believe Mr. Brockway and his assistants to be men earnestly searching after the best methods of dealing with youthful criminals, and think them successful in solving many hard problems in connection with a most difficult subject. That the treatment is not absolutely perfect will be admitted by all who have given attention to it, but the general impression in this State is, I think, quite favorable to the methods of that experiment.

#### SEC. 74. VIEWS OF MR. BRACE.

C. L. Brace, Secretary of the Children's Aid Society of New York, in a letter to the Commission dated March 29, 1886, says:

The indeterminate sentence as carried out at the Elmira Reformatory I have carefully examined, and consider the system excellent, and the institution itself is certainly superior to any institution of its kind in this country, and equal to any abroad.

#### SEC. 75. CONNECTICUT SPECIAL COMMISSION ON CONTRACT CONVICT LABOR.

Speaking of the reformatory at Elmira, the Special Commission of Connecticut on Contract Convict Labor, in their report of 1880, say:

There are several peculiarities about this prison, which, so far as your committee is aware, are not found at any other in this country, and which tend largely to its success. It is strictly reformatory, and as such is graded into three classes. No person is received over 30 years of age, and all only for the first offense. Special laws have been enacted, all of which are in the interest of reform, and to enable the proposers of this experiment to give the plan a full and fair trial. The prisoners are not sentenced to a definite, fixed period, but for a maximum term. Upon entering the prison they are received into the second grade, from which they are promoted to the first for good conduct, or degraded into the third for bad. As a reformatory the prison is so far a success. All the power of hope, love, ambition, pride, and shame is brought to bear upon each individual. Every possibility of a speedy liberation and success in the future is held up to the prisoner—of places of respect and honor in society, and confidence in business, if by well doing they deserve respect and confidence; or shame, poverty, and a prison, if by a return to criminal practices they again forfeit their right to liberty. Such treatment can have but one result. Whenever, in the opinion of the Superintendent and Board of Managers, a prisoner has shown by long-continued good conduct that he is fit to be trusted with liberty, he is given a leave of absence, during which time he must keep the Superintendent informed of his whereabouts, and of his condition and prospects, until, after a time of trial, having proved his reformation by his conduct, he is given a full discharge. Out of twenty-four liberated on parole, twenty-two earned their discharge by showing their fitness for liberty; one was returned to prison to serve out the full length of his sentence, and one left the country. The same motives which induced these prisoners to strive for the highest grade also induced them to do the most and best work.

#### SEC. 76. VIEWS OF MR. HARMON.

Mr. O. J. Harmon, of Oswego, New York, in a letter to the Commission dated May 14, 1886, says:

In replying to your favor relating to the Elmira plan of prison discipline, I beg to say I regard it as eminently successful and the only plan resting on a philosophical basis.

Our prisons, county and State, are acknowledged failures, except, possibly, as to life members. Their inmates return to us not only not improved, but worse. Animated by a morbid feeling of injustice and finding every avenue to respectability foreclosed against them, the criminal forces within them argumented and the moral checks lessened, they enter a more determined course of crime. We have acted on the mistake that mere punishment which is the equivalent of crime, cancels the wrong and entitles the criminal to freedom. Not necessarily; the right to freedom depends on the forces within the man, which will work out in his activities, while something of punishment is due to the majesty of violated law, still it must include the idea of reformation. We must reach the sources of criminal purpose and apply healing and strength to the diseased and weakened powers which are active in the inception of crime.

This truth is recognized at Elmira, and the treatment rests upon it. The weakened powers and the motive behind it are fed and supported and held and led by a skillful hand till a habitude is formed, and the power may be safely left to its automatic working. This terminates the sentence and entitles the prisoner to his freedom.

I do not hope for much from this or any other treatment in a ripened criminal. He reaches a point beyond which reform is impossible. But with the young, and onward up to this point, this seems to me to be the true line of work and hope. I am glad to know the thoughtful men of our great West are awakened on this subject. What to do with the pauper and criminal class, for they are linked together, is a question which will abide with us till the problem is solved.

#### SEC. 77. REPORT OF BOARD OF PRISON COMMISSIONERS OF MASSACHUSETTS FOR 1885.

The Board of Prison Commissioners of Massachusetts, in their report for 1885, say of this system:

The largest measure of success cannot be obtained from the reformature until the existing system of sentences shall be changed. This system provides for the imposition of definite penalties for certain offenses. A large discretion, within certain limits, is given to the Courts, who are expected to be able to decide how much punishment should be awarded for a given offense. The theory is mainly that of retribution, though the State



expects that the term of imprisonment shall be used—at the reformatory at least—for the reformation of the offender.

When the New York State Reformatory was established, a new and radically different system was adopted, and has been in successful operation for several years. It is provided that sentences to the reformatory shall be merely "to the reformatory," and the Court does not fix or limit the duration, nor is it specified by the Judge; but the prisoner, under the law, may be held for the maximum term for which he might be sentenced to any other prison. Authority to release on ticket of leave is given to the "managers" of the New York Reformatory, similar to that which this Board has to release prisoners sentenced to the Massachusetts Reformatory, when it is thought that they have reformed.

Strong arguments can be made against either system. Against the system of fixed sentences these considerations may fairly be urged: Even upon the theory that penalties may be imposed in such a manner under some system as to properly punish crime, it is certain that they are not so imposed under the existing system. The Courts endeavor to ascertain the facts in each case as well as they can, but often fail entirely. The great difference in sentence, for offenses which are technically similar, has often been commented upon in a manner grossly unfair to the Courts. It is true that these differences are due partly to the different views held by different Judges as to the seriousness of certain offenses, and it often happens that two Judges, in different parts of the State, impose sentences widely different for offenses really similar, and that great injustice is done to one or the other of the offenders. It more often occurs that there are very great differences in the offenses (of which those who make comments are entirely ignorant) which not only make it proper to administer different penalties, but which would make it unjust to punish them alike. But whether the difference in sentences is just or unjust, it works greatly to the disadvantage of all efforts to secure reformation. The person receiving the longer sentence feels himself to be grossly injured, and that feeling constantly aggravates and angers, making futile all efforts to bring him under good influences. No one thing operates so disastrously against reformation as the difference in sentences for offenses technically similar.

The fixing of a sentence tends, also, to give the offender a wrong standard for measuring his offense and his relation to the community. He feels that when he has served his sentence, he has "wiped out" his offense, and is entitled to return to his place in society, whether changed in character or not, and the law, by recognizing that claim and discharging him at the end of a fixed term, gives its indorsement to that theory. The sentence itself, therefore, makes no appeal whatever for penitence or reformation.

The indeterminate sentence is founded upon a different theory. Its assumption is that the character of the *offender*, and not the character of the *offense*, should determine the duration of his imprisonment. It starts also upon this other assumption, that the character of the offense *does not necessarily indicate the character of the offender*. The man who steals a thousand dollars is not necessarily ten times as bad as the man who steals one hundred. It therefore puts all offenders of a similar class upon the same footing when they enter the prison, assuming that in this way a fair basis is obtained for the imposition of sentences. The duration of the sentence is then made to depend upon the offender's character, to be ascertained during his imprisonment, not only by his behavior—for the most dangerous criminals are often the best behaved prisoners—but by all the means which can be adopted to ascertain the real character.

The first advantage of this system is, that it makes a strong appeal at once for the establishment of a good character. The prisoner realizes that he is imprisoned, not so much as a retribution for an offense, as because he is unfit to be at liberty, and that his return to society depends upon a demonstration that he is fit to return to it. This—perhaps not at first, but in the course of his term—impresses him, as it does every one, as a reasonable thing, and when once the idea is grasped, it has of itself a strong reformatory influence.

When the average prisoner enters the prison his first thought, and the one constant thought, is of the date of his coming release, as the anxious thought before his sentence has regard to its probable length. The indeterminate sentence makes the date of release depend upon himself, and not upon the word of the Court. He must struggle for it. If he has no trade, he must learn one; if he is illiterate, he must be studious; if he has an uncontrolled temper, he must master it; if he has been lawless, he must learn to obey; if he has been shiftless, he must form habits of industry. When these things have been done, and only then, will his release come. The success of the New York Reformatory depends largely upon the fact that the indeterminate sentence makes this appeal to all who enter it. It arouses the ambition and is an incentive to the hope of every man, and by making a prisoner's future depend mainly upon himself, it secures his cooperation in the efforts made for his reformation.

There are two arguments against the system of indeterminate sentences which are entitled to attention. It is said by those who oppose it, that it commits the decision as to the length of a prisoner's sentence to a Board which may not possess or exercise good judgment, and may deal unjustly by the prisoner. We believe it to be a sufficient answer to say that, even if the offense, and not the character of the offender, is to be the basis of a sentence, a Board which can have time to get at all the facts of the case will, in most instances, be better to reach a just conclusion than any Court can which sees the prisoner for only a few minutes, or at most a few hours. It is hard to conceive of a more difficult task than that imposed upon a Court of deciding, for instance, whether a given offense shall be punished by a sentence of twelve or eighteen or twenty-four months. Under the system of indeterminate sentences, every prisoner guilty of offenses techni-

cally similar, would be sentenced to the reformatory, and might be held for the maximum term provided by law for the punishment of that offense, leaving the question of the actual duration of his sentence to be determined at a later day by his own conduct.

It is also said that no Board can ascertain a man's real character with sufficient accuracy to make his release conditional upon it. But it must be remembered that sentences are now imposed by the Courts upon precisely this basis, and a supposed general good character tends to secure a shorter sentence than would otherwise be given. It is, then, merely a question as to whether it is better, or more feasible, to ascertain the character before or after sentence. It seems clear that the authorities under whose eye the prisoner spends every moment of his time, are more likely to form a wise judgment in regard to his character than any Court can in the limited time allowed for an investigation. The Court may be able to ascertain the prisoner's *reputation*, but his *character* can hardly be known until it has been ascertained by careful study. If any mistake is made by the Board in regard to a prisoner's character, it will rarely be *against* him. Men rarely appear worse than they are, and there is little danger that any man will be unjustly dealt with by being kept longer than he should. It would only be upon a definite record of bad conduct, and a clear demonstration of bad character, that a prisoner would be held for the full possible term of his sentence. We can see no more reason for releasing a criminal before his reformation is probably assured, than for releasing an insane person from an asylum at the end of a definite term, regardless of his restoration to sanity.

## SEC. 78. REPORT OF SAME BOARD FOR 1881.

And in their report for the year 1881 the same Board, of Massachusetts, remarks:

Whatever plan may be adopted to afford the best opportunities for accomplishing the reformation of criminals, the highest results can never be attained while the present system of imposing definite sentences for crime is in force. This was long ago recognized as true in the treatment of young offenders; and for many years children have been sentenced to the reform schools for their minority, no time-sentences being imposed, the power to release them when they are deemed to be reformed being given to the authorities in charge of the schools. There are many reasons for applying the same principles in the treatment of adult criminals. The present system holds out no inducement to the convict to reform. His sentence is a fixed one, and expires on a day certain, regardless of his conduct or his character. The one thing he keeps more constantly in mind than any other is the day of his release. He knows that this will not be much delayed by anything he may do, and cannot be materially hastened by good behavior or by any change of character. He learns to look upon his punishment as wholly retributive, and, when he comes out of the prison, he feels that he has wiped out the record against him, and is to begin again. During his trial, his main effort and that of his counsel, is to secure as light a sentence as possible; and often, with no conception of the gravity of his offense, he harbors a spite against the government for punishing him too severely. It may be necessary to continue for the present this system for most offenders, as a change from fixed sentences to indefinite ones involves a change in the whole system of prison management and discipline. But for an institution whose first aim is the reformation of criminals, indefinite sentences must eventually prevail. Under such a system a convict would be confined until he was deemed to be reformed, be it a short or a long time. This throws around the prisoner every possible inducement for self-improvement. He realizes that his future is in his own hands. He sees that the State is not punishing him arbitrarily for his crimes, but is interested in his welfare; that he is deprived of his liberty not so much on account of his acts as on account of his character, and that his right to freedom is dependent upon his reformation, which in turn depends upon his own use of his opportunities.

With such a view of his offenses, of the results they have brought, and of the way of obtaining his liberty, he has every inducement to do his best. Some, with their future thus in their own hands, will speedily change their habit of life, and make resolute endeavors to build up better characters, and can soon be released. Others will come to such endeavors very slowly, and some, possibly not at all. Some of those who begin the struggle will fail; but, as a rule, they will try again and again, until they attain some degree of success. In determining when a convict has reformed, a great responsibility rests upon those who have his training in charge. They will sometimes be deceived; and sometimes one who had within the prison really reformed, will fall under temptation in a life of freedom, and return to a criminal life. But this is equally true of other wards of the State. A large percentage of those discharged from our asylums for the insane, as cured, return again for treatment, the physicians having been mistaken in regard to the cure, or having overestimated its permanency when the patient came in contact with the world. But these mistakes would not lead any one to suggest a fixed term of confinement for the insane, with a discharge at its end, regardless of the condition of the person. If an indefinite sentence, to be ended only by his own reformation, be deemed too severe, the indeterminate sentence now imposed in New York upon those who are sent to the State Reformatory at Elmira, ought certainly to be tried.

## SEC. 79. CONTINUATION OF REPORT.

The report then describes the system followed at the Elmira Reformatory, and continues:

It will be seen that this plan holds out to the convict the strongest possible inducements for reformation, both in confinement and after release. If anything in the way of legislation will secure a change of life, this will; for it takes advantage of every motive which usually moves a rational being, and makes full use of the means which are most likely to change a criminal into a good citizen. The system has produced excellent results in the Elmira Reformatory, and we recommend that it be adopted in sentences to the reformatory prison for women, and to the reformatory for men, which we have suggested, if it shall be thought wise to send a part of the prisoners to it directly from the Courts, instead of transferring them from the county prisons.

## SEC. 80. REMARKS OF MR. LANGMUIR.

It was said, in 1881, by Mr. Langmuir, Inspector of Prisons in Canada, who, with a number of officials of that country, had examined the prison system of the United States, that—

At the New York State Reformatory for adult males, at Elmira, I found certain features of prison management decidedly in advance of our views. The system has been in operation five years. The building is a fine one, and is furnished throughout with all the modern conveniences of prisons. Instead of the prisoners being associated together as they are, without regard to the differences in their character and conduct, there are four large dormitories, which provide sleeping room for four different classes of prisoners. The distinction made is not only on account of the offenses for which they are committed, or the length of the term of imprisonment to which they are liable. There are three grades, and entrance to the higher of these depends entirely on the conduct of the prisoner while in prison. Offenders sent to this prison are not sentenced for definite periods, as with us. The State law provides a maximum period of confinement for the different classes of crimes, and no minimum. This applies only to the Elmira prison. What the real duration of the sentence shall be, depends on the prisoner. All enter in the same grade, and their conduct is observed carefully from the very first, and marks of merit and demerit are given. By good conduct a prisoner may earn promotion to the first grade, which has certain privileges attaching to it. Here good conduct still further promotes the interests of the prisoner, and if the signs of the reformation which led to his promotion from the second grade are still manifest, the Superintendent and prison managers may release him on a probation, which generally lasts six months. The friends of the prisoner are corresponded with and their wishes consulted. Arrangements are also made with farmers, and others, in a part of the State where the prisoner is not known, and there he is sent to earn his living. Great care is exercised in securing respectable employers who, of course, are confidentially informed of all the antecedents of the prisoner. The employer makes a report at the end of the time, on the probationer's conduct and sincerity in his efforts for reformation. I never saw a prison in which the inmates had less of a convict expression. They were cheerful, and wore an expression of openness and candor I have never seen in any other penal institution. The great encouragement given to right conduct has a very salutary effect, both in securing good conduct, and encouraging good habits and desires. A prisoner told me that he could scarcely sleep at night, thinking what he could do the next day to merit a good mark. There are other excellent features associated with the system. The Superintendent, instead of addressing the prisoners as a mass, must become personally familiar with the disposition and conduct of each man. He is brought into contact with each, and this contact has the effect of individualizing the prisoner. Of course, no pains are spared to make each man, while retaining his manliness, submit his will to subordination.

## SEC. 81. REPORT OF JOINT LEGISLATIVE COMMITTEE IN NEW YORK.

The following appears in the report of the Joint Committee of the Senate and Assembly of New York, appointed to investigate the Elmira Reformatory, the report being submitted April 27, 1881:

We take pleasure in commending the management for the excellent condition in which the buildings and grounds are being maintained, and for the skill, thoroughness, and efficiency with which the work of reforming and aiding the inmates is being carried on. The prisoners are all young men, between 19 and 30 years of age when sentenced and convicted of their first offense. The prison was suggested, planned, and is erected

and operated, with a view to the reformation of this class of offenders. We are convinced that its object is being attained to a greater degree than its best friends anticipated. The structure has cost nearly or quite a million and a half of dollars, but the State has something to show for its money. The buildings are large and substantial, well lighted and ventilated, and models of cleanliness and good order. The five hundred cells are of good size, and comfortable, each being furnished with a bed, a chair, a small cupboard or bookcase, and a crude writing desk; and each is lighted with gas. The food supplied to prisoners appears to be plentiful and wholesome, and the clothing is all that is required. Books and writing material are supplied as needed. In the arrangement of the buildings, as well as in the management of the prison, everything compatible with reformatory discipline seems to have been done with a view to the comfort of those who are so unfortunate as to be incarcerated within its walls. The prisoners are kept hard at work throughout the day, and attend school during three alternate evenings of each week, the intervening evenings being occupied in study. It was the privilege of the committee to attend the schools, which we found in the hands of competent instructors. The work bore every evidence of substance and thoroughness, while the advanced studies taught, and the brightness and proficiency of the pupils quite surprised us. As is well known to the Legislature, if not to the people, the inmates of the reformatory are sentenced to the institution for an indefinite period of time, the law only providing that they shall not be imprisoned for a longer period than already authorized by law in a State prison or penitentiary for a like offense. Aside from this provision, the time of their imprisonment depends upon their industry, good conduct, and proficiency in studies. They are made to understand that they can regain a place in society by deserving it. The pride, self-respect, and ambition of the inmates is encouraged and stimulated by a system of marks most skillfully arranged, which results in classifying them into different grades, thus entitling them as they advance, to enlarged privileges, greater confidence, and better and more attractive clothing, and finally, to release upon parole. The committee were struck with the frankness, cheerfulness, and manly conduct of the inmates, and the entire absence of that sullen and dogged indifference and abandonment so universal in prison life. In general, we have none but words of commendation for the reformatory work of the State Reformatory. The experiment is being proved a success. Young men who have fallen into bad ways are being saved to homes, friends, and society, instead of being crushed in spirit and prepared for deeper shame and greater crimes. The principle upon which the reformatory is conducted should, in our judgment, be persevered in, developed, and extended into the other penal institutions of the State.

## SEC. 82. VIEWS OF MR. NICHOLSON.

Joseph Nicholson, Superintendent of the Detroit House of Correction, in a letter to the Commission dated May 15, 1886, says:

From my experience, I am in favor of the indeterminate sentence plan, carefully matured and stripped of the ornamentalisms that are now deemed a necessity at Elmira.

## SEC. 83. REMARKS OF CHARLES DUDLEY WARNER.

Charles Dudley Warner, in his address before the National Conference of Charities and Correction, at its twelfth session, in Washington, 1885, said:

If I were to say that one thing was most necessary in this country at this moment, it would be discipline. I mean by this, intellectual as well as moral discipline, a training or discipline that must obtain in all our education, and which is a little relaxed, or being relaxed, in many of our colleges and higher institutions of learning, where it is thought proper to leave to the discrimination of men not yet come to their majority the kind of training and discipline they should have or work in life; the sort of discipline which consists in making a person still in his youth do something that he does not want to do—ordinary routine in college, the ordinary routine of prayers, of study hours, of recitation. The more I see of life, the more I believe in the value of these disciplinary means. If they have not been enjoyed at home, all the more reason why they should be enforced in the colleges and institutions where youth are educated. I speak of this because this sort of discipline lies at the root of education. The modern notion that to be educated is to have a certain amount of knowledge, not to have a mind disciplined, lies, very likely, at the root of our failure, where we do fail and have failed in the matter of prison reform. Because, if minds from the better part of society, notwithstanding the advantages of home culture and home training, need in every step of their development the discipline of routine, of obedience, of the crossing of the inclinations, then the waifs, the failures of society, those who fall into the clutches of the law, need it still more in any attempt at reconciliation.

I want to say further, in regard to the whole system of model prisons, this: It had been my official duty from time to time for ten years to visit a great many of the prisons of

the country. It has certainly been a very pleasant thing, so far as society itself is concerned, to see the emergence out of barbarism in the manner in which we have been treating prisoners congregated in penitentiaries. I have seen, as you have, the evolution of the prison into that which in some cases is not unlike a very fair hotel, where the prisoners are boarded and lodged, and presented with no bill at the end. But I found this; that whatever the prison, whether it was well warmed and well ventilated, whether the food was good, whether, in short, the prisoner was petted, or whether he was under the old rigor of the barbaric prison, the result to the man when he went out was about the same. I happened a year ago to go from a prison of the old sort to a prison of the better sort. You know what I saw in the old sort. You know the men in uniform that I saw there; you know the prison look, the look of dejection, of abandonment, the sour, sullen look, showing all lack of interest in life. You know the feeling that one has after visiting such a prison—a feeling that one cannot get rid of in two weeks. I went from that to the better sort, a prison well ordered, expensively built, exceedingly comfortable, so far as physical comforts went. But I found the same sort of prisoners—men no more likely to go out better, but rather worse. I found the same heaviness of countenance, the same inertness, the same physical and mental discouragement. And it seemed to me then, and seems to me now, that if we can do nothing better than that, if really we cannot touch the man's life and character, we would better, on the second or third offense, or whenever it was decided that the man belongs to the criminal class, kill him at once and be done with it. He is a danger and a constant expense, and of no earthly use to himself or to anybody; and he ought not to be allowed to propagate his species. If that is true, if all our philosophy, all our science, does not enable us to take a step farther than the temporary amelioration of his physical condition for from three to ten years, we are certainly far from having attained any very high philosophic or scientific ground.

#### SEC. 84. SAME SUBJECT CONTINUED.

I went to Elmira; and it is with reference to these things that I want to tell you what I saw there. The Elmira penitentiary is in its outward appearance a handsome edifice, built not very well, but with some little pretensions to architecture, for the accommodation of about six hundred people. It is well ventilated. The cells are of two or three sizes, fitted for a graded prison in that respect. The reformatory receives convicts from any part of the State, in the discretion of the Judge, who are between the ages of 16 and 30, and who are then convicted of the first penitentiary offense. It is called technically a juvenile reformatory, but in all the prisons there are very many prisoners between the ages of 16 and 30. A very large proportion of all the convicts who are there for the second and third time, are under 30. In all the prisons that you visit, you are struck with the youthfulness of the occupants. So that, while this is a prison for first offenders, yet ranging up the age of 30, there is there, a very large number of men just as fully furnished for criminal life, just as determinedly set on it as you will find anywhere else. The accident that they have not been before caught and convicted, is an accident, very likely. They are, for the most part, men who have been brought up from boyhood to a criminal life. They belong in any philosophical classification to the criminal class. So that the experiment there is really with difficult and hardened criminals.

Before I go farther I want to say another thing about education. The notion very largely prevails that it is not a proper thing to educate a criminal, that it may not only make him a greater adept in crime, and that he will become an accomplished rascal. It is my observation that the criminal is not an intellectual being, that the criminal class and the class that will be criminal are low in physical as well as mental and moral condition. They are men usually given to vices through inheritance or by carnal and vicious tastes. They are not intellectually capable in any way. Their will is gone, their motive power is lost. They are, therefore, men who must be approached, if approached at all in any reformatory, on the intellectual side. I do not believe at all in the rose-water treatment of many prisoners. I have an entire disbelief in holidays, in flowers, in tracts, in the little dabbling of sentiment that would make a prison a pleasant place to visit. You must go more radically at the man himself, and come at him physically, intellectually, and morally, in order to effect anything at all.

The prison at Elmira is in charge of Mr. Brockway, who has organized and originated this, to me, entirely novel treatment of prisoners. When the prisoner is brought in he is submitted to a very thorough personal examination by the Superintendent. There is a large ledger kept, in which a page or pages are devoted to his case. The examination goes into his heredity, who was his father, who was his mother, and even who were his grandparents, if it is possible to ascertain? What sort of lives did they all lead? Where was he born? Had he any home life? How long did he stay at home? Had he any education? The ancestry of the boy as showing the tendency of the man. An examination is also made of him physically; and this interested me very much, because it is not a mere examination of whether he is fat or lean, or consumptive, or with tendency to some other disease, but of the quality of the man's flesh, is there any fineness in him, or is he coarse in his physical fiber? Next a careful examination is made of him mentally. What intellect has he? What quickness, what solidity? Has he any training? Is he bright or dull? Then a thorough diagnosis of his past life is made, relating not to crime, but to his capacity for good. After that is prognosticated with increasing certainty, the sort of treatment that is best for him. Before that, he is, of course, washed and clad, and made fit for association in a decent prison. At first he is put into the second grade.

#### SEC. 85. SAME SUBJECT CONTINUED.

In the institution there are three grades—first, intermediate, and third. The new-comers go into the second grade. From that, they may go up or down according to their behavior. When a man is put into the second grade, he is told the length of his sentence, the maximum length. He is also told what he has to do to free himself from the institution. That is, he has to make so many marks in order to get out. He is informed what is expected of him in a disciplinary way. Before going there, I could never understand how an indeterminate sentence could be best for criminals and for society. I never before saw any tribunal that could ascertain when a man was fit to go out of prison. The easiest thing in the world is to be religious and be a hypocrite and not be a bit changed. How are you going to know when a man is to go out? that was always the sticker with me. A prisoner may be kept for the maximum time for which he may be sentenced, or, under the discipline of this prison, he may leave within a year. In all the grades there are distinctions of dress and treatment. In the second grade he is not much removed from the citizen in appearance, he wears clothes of a brown color, and a Scotch cap. In the first grade, which he may reach by good conduct, he wears a blue uniform, with a soldier's cap. In the third grade, to which he may descend by bad conduct, he is put into a red garment. He looks like a criminal in his apparel. It is a stigma on him. These three grades have different privileges. The first grade men occupy better cells and have better fare. They dine together, and in the dining hall sit at little tables, eight or ten at a table, as at a hotel. When I visit the institution, I always like to go into that dining-hall, it is so well conducted and the men are so polite to each other. When the first grade men march, they walk four abreast, in honorable ranks. They are officered by men chosen from their own grade. They are also the officers of the second grade. They have also certain disciplinary duties in the institution. All this is openly known. They are overlooked by the officers of the institution, who report any one guilty of dereliction of duty. The second grade men take their meals in their cells, and march in ranks of two. The third grade men march in the prison lock-step, and take their meals in their cells, which are not so comfortable as the other cells. The prisoners feel these distinctions the more keenly the longer they stay there.

The Superintendent has to decide for the new-comer what is the best sort of work for him to do, for there are several things taught there; next, into what school shall he go. The code of behavior is very strict. The discipline in little things that go to make up conduct in Elmira is exceedingly minute, so that it is impossible for a man to submit himself to it without feeling it very thoroughly. In the work-shop he is marked, as well as for his progress and conduct in school. In the school he is marked for his attainment, his diligence, and his progress. He may be in the primary class or pursuing higher studies; but wherever he is he is required to come to a certain standard, according to his capacity, and he is marked on that. He has to earn a certain number of marks before he can change his condition from the second grade to the first, and be on his way out of the prison. He has to earn these marks by a kind of discipline in all respects exceedingly repugnant to him. He has to earn them, not to-day, but day after day, for months. He has to behave himself perfectly, so that he gets his nine marks without any dereliction. After he has earned all his marks he is put into the first grade; and after six months more, if his marks are perfect and other things are favorable, he is entitled to a conditional release. The interest to me in that was this: that no man can submit himself to that threefold discipline, I do not care whether he does it willingly or unwillingly, for one or two years without being decidedly changed. I do not believe it is possible to put a man through a drill of that kind without changing him. At first, very likely, he may be a hypocrite; but that cannot last. It is sometimes a long time before they come down to business, but, in a majority of cases, they do come down. It is said that some men are incorrigible, that they cannot be touched and reformed. I am not certain that that is not true. There are some snarls that cannot be straightened, and perhaps there are some men. I remember Mr. Brockway said at my first visit that about 20 per cent were incorrigible, but that the statistics of the institution show that 80 per cent of the men who went away remained beyond the law, or, as some one said, they were taught to "steal honestly." The second time I was there Mr. Brockway said he did not know about that incorrigible business; he did not feel so sure as a few weeks before about the per cent. He said that he made out a list of ten men that he had a right to send to Auburn who should be sent there if they were incorrigible, but he did not send them. In about a week from that time two of the men got a start, and were doing very well. When I was there later that list had disappeared. Those ten men were doing as well as any one, and likely to keep on doing well.

When a man has gone on his three-ply duty, and has come to the end of a year with a perfect record, then he must submit himself to the judgment of the Board of Directors, who are responsible to the State and not to the Superintendent. The case with all its aspects is submitted to them, and the question is asked whether the man shall go out. If he goes out, he is paroled for six months, but he is never sent out without a place being provided for him. That place is provided often by the man's friends, often by the men who have employed him before, for this seminary at Elmira is getting to have a good reputation for turning out honest boys. It is asked every month to place men from there. It is a very good diploma to graduate there. The number of its correspondents is increasing.



ing so that it is easier and easier to place men. The men who are sent out are required to report every month as to their condition, and this must be certified to by some one known to the institution. When that has gone on for six months, and the man is earning his own living and is behaving himself, the release is made absolute by a vote of the Board, and nothing more is heard of it. It seems a little absurd that criminals should be educated as college boys are, and yet education there is carried to as high a pitch in some respects as in some of our high schools. It is carried on especially in the direction which will go to make a man a good and intelligent citizen, to make him fit to exercise the right of suffrage, and to do his duty to the State with understanding. Ordinary political economy, history, English and American literature, and branches of that sort are taught, and taught very thoroughly, because these young men are not studying as some other young men do, to satisfy some one's pride at home, but to get out, and they give their minds to it. They have to pass examinations and are marked on their reports. They have among themselves a weekly newspaper. By the way, I recommend it as the most decent family paper I know in the country. It has nothing in it that would injure a prisoner, and you can not afford to send some of our papers to the prisons. I was very much interested in a very high development that I found there. A lawyer of Elmira, has every Sunday morning, what is called a practical morality class. It is made up of a little more than two hundred of the six hundred in the institution, chosen from the three grades according to their ability. There came up in connection with this a very curious psychological fact bearing upon this relation of morality to education. I found that the very much larger proportion of these higher men were selected from the first grade; there were very few from the third grade. The Superintendent made out a table showing exactly how, from time to time, like an isothermal line, conduct went along with intelligence. The best behaved men were the best scholars; the moral training went along with the intellectual. It is an exceedingly interesting table. In this practical morality class, they were finishing the reading of Socrates from Professor Jowett's translation. The class was as remarkable in its intellectual quickness, readiness, and ability to understand the problems of the Socratic teaching as any class I ever saw. I do not think that I ever heard among young men such apt and wonderfully intuitive discussion as they carried on there. What happened one morning? Here is an institution made up perhaps one half Catholics, a good many Jews, and people of all denominations and no denomination. They had been studying and discussing Socrates, weighing all the abstract questions of right and wrong and morality, and that morning they came to the conductor of the class, and said to him, "we would like to go on to the New Testament, and study the character of Christ." I do not suppose that all the good clergymen of the State of New York could have drawn that class to the study of Christ in five hundred years. But they came naturally to it as a study of morality, and the next term they were studying the New Testament, and studying it without prejudice.

I believe that a State Prison should pay. I do not believe that the State ought to support any man, because he is a criminal, in idleness. I asked about this place, and found that it did not pay. It cost the State about \$30,000 a year to carry it on; and as we were talking about building a new prison in Connecticut, that seemed to me a lamentable fact. After I went a second time, I thought it over more, and it came to me in this light. At our Connecticut prison, we get back 60 per cent of those whom we have educated there as criminals. They are very accomplished. They come back a great many times. We get back, I say, 60 per cent; that is about the average of all the State Prisons of the country. Here is an institution that takes men of this character, and 80 per cent do not only not come back, but are made productive; decent, and respectable citizens, while it only costs \$30,000; all the rest the men earn themselves. They earn it in various trades, besides thus fitting themselves for their own occupation. Classes in stenography, in telegraphy, in modeling, in drawing, are all taught, and the men are fitted to work in the world, and it only costs \$30,000. Why, it costs more than that, under the old system, to catch the men, and try them, and bring them back to us again. Thus the State is making and saving money by this institution. The first thing that struck me after I became familiar with the reformatory was the absolute change in the faces of the men. All the insensibility, the heaviness, had gone out of them, physically as well as mentally, and moral energy was awakened. They ran up and down stairs, and moved briskly, and the whole aspect of the person was changed.

There is one very serious objection to any kind of institution life. That is to say, it makes the men dependent. The more we can get rid of institution life in every way the better for us. The trouble at Elmira, as everywhere else, is that the men are fed, lodged, and clothed, and everything is done for them. This trouble of the dependence of the men of course obtains there. They get good food, because the Superintendent says he gets better work out of the men when he gives them good food; but he finds that they are to a certain degree dependent, and he thinks of putting the whole thing on the "European plan." There is a good deal of sense in that. Let a man go into a restaurant, and order what he chooses, knowing what he earns. He would very likely overeat at first, but the process would bring him down to the basis of knowing how to spend his money as well as to earn it. I do not know any one but Mr. Brockway who could carry out this plan; but I believe that he can make that institution fully independent, earning its money, buying its food and clothing, just as people are required to do outside.

## SEC. 86.—INDETERMINATE SENTENCES IN THEIR COMPLETE FORM.

In the indeterminate sentence in its complete form, a prisoner would be kept in prison until those who had charge of him were satisfied that he was fit to again become a member of society. According to this view a man might be compelled to pass his life in prison, when it was evident that he was an incorrigible criminal.

If it were possible to tell when reformation was effected in a prisoner, if it were possible to secure at all times officers of sufficient intelligence, discrimination, and courage, who could and would not make mistakes, this system might be applied to every crime.

## SEC. 87.—THIS VIEW REASONABLE.

It seems reasonable that under our form of government the law-making power should determine what acts constitute a crime, the judiciary should determine whether those acts have been committed by a given individual, and then, guilt having been determined, the mode and duration of punishment should be left to the executive branch of the government. As it is now, a Judge passes sentence upon a prisoner, aided by the best knowledge he can secure. But it is difficult for him to know much of the prisoner's antecedents, and almost impossible for him to predict with any degree of certainty within what time the evil traits of the prisoner may be removed, or whether he is capable of reformation at all. By sentencing the prisoner without specifying the length of time he is to serve, leaving this to be determined by his keepers, who are the most competent judges, it is fair to assume that the sentence in any given case would be more equitable than if left to be fixed arbitrarily in advance without a knowledge of the prisoner's character and qualities.

By this system it is proposed to draw a line between those in whom reformation may be effected and those in whom reformation cannot be expected. It aims to secure their reformation by showing them that the law will not permit them to return to the walks of crime, and by impressing on them the idea that their punishment is not the result of revenge, but inflicted with the wish of enabling them to improve and benefit themselves, while, at the same time, the interests of society are protected. It has been said by some of the advocates of this system, that a prisoner should be treated as an insane person; he should be restrained as long as it is evident that his liberty is dangerous to society, and discharged from confinement just as speedily as he can safely be pronounced cured. It is also said that the majority of those who commit crime do so because they have not had the benefit of that training and education with which the law-abiding members of the community have been favored, and as a natural conclusion, the criminal may be made a good citizen by such training and education imparted to him when he is a prisoner, in connection with that system of labor discipline there enforced. It is sought to fasten in the prisoner the belief that his liberation depends upon himself; he alone can make himself free. His own bad acts brought him to prison, his own good conduct there, and the prospect that he will abandon his evil ways, can alone release him. His mind is bent on that and not on the time when his sentence would, if fixed by law, expire. As said by Mr. Brockway, in a paper contributed to the International Penitentiary Congress at London: "Any predetermined graduation of time sentences for crimes must appear to those affected thereby as vindictive in spirit, thus destroying that spirit of harmony between the law and the subject, so essential to obedience."

The attempt to retribute to a criminal what is proportionate to his offense, either by imprisonment or by imposing fines, produces a pernicious effect, both upon him and upon all who are his interested observers, because the penalty must seem inadequate—either insufficient, in which case the effect is to encourage crime, if it exerts any influence whatever; or exaggerated, tending to exasperation and depression; or if by any possibility the penalty imposed should seem to be just, it is then esteemed to be expiatory, and therefore, when endured, absolutory. It will be readily seen how, in either case, such impressions are a hindrance to reformation. The present system of sentences unavoidably supplies the mind of the prisoner with an object of thought so fascinating as to prevent the necessary process of reformation. I allude to the date of the termination of his sentence, and the expectation of renewing the experiences of his former life." The indeterminate sentence secures the coöperation of the prisoner, because by his efforts alone can be secured his liberty. It must be evident that this is the most powerful incentive to do what is required, and to earn the coveted goal of freedom.

#### SEC. 88. NOVELTY OF IDEA OF INDETERMINATE SENTENCES.

Nor is the idea of an indeterminate sentence so novel as at first it seems. In the Act we have proposed for the management of an Industrial Home or Reform School the inmates are not to be detained for any fixed time. They may be released whenever, in the judgment of the Managers, it is for their best interest and the interest of society to give them their freedom. This is the rule, we believe, in all institutions of this character, and thus it may be said that the sentence of a juvenile offender, if his commitment may be called a sentence, is an indeterminate one. So in regard to the commutation law existing in our State, and similar laws existing in most, if not in all, of the States of the Union. The prisoner is sentenced to a certain term of years of imprisonment, which is the maximum time for which he can be detained. He can, however, by good conduct and obedience to the rules and regulations of the prison, earn a commutation from his sentence, varying in the different States, and in California amounting, after the fourth year, to a deduction of five months for every year of his term. The indeterminate sentence secures the same result, save that the time which the prisoner may earn is not fixed absolutely by statute, but is left to the discretion of the prison directory.

#### SEC. 89. SOME ADVANTAGES OF THIS SYSTEM.

The advantages of this system were pointed out in the Assembly report of the Committee on Prisons, made in 1881, to the Legislature of California.

1. It supplants the law of force by the law of love.
2. It secures certainty of restraint and continued treatment, which operate to prevent crime as severity does not.
3. It makes possible the arrest and right training of that whole brood of beginners, before great depravity is reached and character is irretrievably fixed.
4. It utilizes for reformatory ends the motive that is always the strongest—the desire to be released, the love of liberty.
5. It removes the occasion and so mollifies the feeling of animosity usually felt towards the law and its officers, puts the personal interest of the prisoner plainly in obedience to the rules of discipline, and leads him to coöperate with those laboring for his welfare.

#### SEC. 90. PRACTICAL CONSIDERATIONS.

We have presented the features of the indeterminate sentence thus in detail, because we are convinced that there is much of merit in it. Applied as in New York, to first offenders, between the ages of 16 and 30, and as we recommend in the Industrial School, to juvenile offenders, we are satisfied that it will secure the best results. But when its application to our whole prison system is considered, we see practical objections to it, that lead us to believe that it would be unwise to give it other than a limited operation.

To adopt it entirely and to make it applicable to all offenses, would be at once to change all the ideas of punishment that have hitherto prevailed, and would involve the reconstruction of our prison system. From the earliest times, certain crimes have been considered as of greater or less magnitude than others, and accordingly different punishments have been prescribed by the law-making powers for those guilty of them. The distinction between grand and petit larceny may be pointed to as an example. If a few dollars more are stolen the same crime becomes grand larceny, and the culprit a felon, sentenced to a State Prison. If a few dollars less, the thief is guilty of petit larceny only, for which his punishment is imprisonment in the county jail. The indeterminate sentence draws no distinctions between offenses. It recognizes the criminal, whatever his offense, as one who must go through a certain course of discipline and training before he is fit to mingle again with his fellows. If the system is sound in principle, it should be applied to all offenders, and to all kinds and degrees of crime.

#### SEC. 91. DETERRENT POWER OF PUNISHMENT.

Say what we will, we cannot in safety rob the law of its terror to evil-doers. Crimes of atrocity must be punished with certainty and severity. The man who commits robbery on the highway, ready and willing to take human life, if necessary, to accomplish his purpose, is a greater criminal than the petty thief. His offense should be more severely punished. It may be said that the prison managers will take into consideration the gravity of the offense in determining whether a prisoner should be liberated. But society does not know that this will be done, or that, if attempted, the discretion thus conferred upon the prison officers will be wisely exercised. Society, under any criminal code, should feel that its members and their possessions will be amply protected. Then again, assuming the soundness of this principle, why should the gravity of the offense be considered at all? If the man is reformed he should be released. The man who commits robbery may do it under as great a temptation as he who commits a less flagrant crime. His reformation may be as speedily and as permanently effected, and logically he should as soon be entitled to his release. We do not believe that at the present time our people are prepared to accept this code, that draws no distinction between crimes.

#### SEC. 92. DIFFICULTY OF FINDING PROPER OFFICERS.

Then there must be somebody clothed with the power of saying that a man is reformed. We do not say that men able to do this without error do not exist, but we do say that it is extremely difficult to find them. We must take the world as it is, and we feel satisfied that it would be almost impossible to find for any number of years, men possessed of sufficient

knowledge of human nature, courage, and power to withstand the importunities of friends, to be intrusted with this vast power. All that we can learn leads us to believe that the reformatory under the charge of Mr. Brockway is an eminent success. But it is said that the system will die with Brockway. Whether this will be the result, time alone can determine. At all events, we believe it more prudent for us in California to wait before making the experiment. And, if in after years we become convinced that there is all the merit in this system that is claimed, we can then adopt it.

### SEC. 93. LAW GOVERNING THE ELMIRA REFORMATORY.

In order that the Legislature may be furnished with the law under which the Elmira Reformatory is operating, we submit it for their consideration. It is as follows:

An Act in relation to the imprisonment of convicts in the New York State Reformatory at Elmira, and the government and release of such convicts by the Managers.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. Any person who shall be convicted of an offense punishable by imprisonment in the New York State Reformatory, and who, upon such conviction, shall be sentenced to imprisonment therein, shall be imprisoned according to this Act, and not otherwise.

SEC. 2. Every sentence to the reformatory of a person hereafter convicted of a felony, or other crime, shall be a general sentence to imprisonment in the New York State Reformatory at Elmira, and the Courts of this State imposing such sentence shall not fix or limit the duration thereof. The term of such imprisonment, of any person so convicted and sentenced, shall be terminated by the Managers of this reformatory, so authorized by this Act, but such imprisonment shall not exceed the maximum term provided by law for the crime of which the prisoner was convicted and sentenced.

SEC. 3. Every Clerk of every Court by which a criminal shall be sentenced to the New York State Reformatory, shall furnish to the officer having such criminal in charge, a record containing a copy of the indictment, and of the plea, the names and residences of the Justices presiding at the time, also the jurors, and of the witnesses sworn on the trial, a full copy of the testimony, and of the charge of the Court, the verdict, the sentence pronounced, and the date thereof, which record, duly certified by the Clerk, under his hand and official seal, may be used as evidence against such criminal proceeding taken by him for a release from imprisonment by *habeas corpus*, or otherwise. A copy of the testimony taken on the trial, and of the charge of the Court, shall be furnished to the Clerk for the purposes of this Act, by the stenographer, acting upon the trial, or if no stenographer be present, by the District Attorney of the county. The stenographer or District Attorney furnishing such copy, and the County Clerk, shall be entitled to such compensation, in every case in which they shall perform the duties required by this Act, as shall be certified to be just by the presiding Judge at the trial, and shall be paid by the county in which the trial is had, as a part of Court expenses. The Clerk shall also, upon any such conviction and sentence, forthwith transmit to the Superintendent of the reformatory notice thereof.

SEC. 4. Upon the receipt of such notice, the Superintendent in person, or a subordinate officer of the reformatory by said Superintendent for that purpose duly delegated, shall proceed to the place of trial and conviction, and the Sheriff or keeper of the jail having the custody of the convict shall deliver him to such Superintendent or delegated officer, with the record of his trial and conviction as made up by the Clerk, and such convict shall thereupon be conveyed to the reformatory, the expenses of which conveyance shall be charged against and paid out of the earnings or other funds of the reformatory.

SEC. 5. The Board of Managers shall have power to transfer, temporarily, with the written consent of the Superintendent of Prisons, to either of the State Prisons, or, in case any prisoner shall become insane, to the Convict Asylum at Auburn, any prisoner who, subsequent to his committal, shall be shown to have been at the time of his conviction more than 30 years of age, or to have been previously convicted of crime; and may also so transfer any apparently incorrigible prisoner whose presence in the reformatory appears to be seriously detrimental to the well-being of the institution. And such managers may by written requisition require the return to the reformatory of any prisoner who may have been so transferred. The said Board of Managers shall also have power to establish rules and regulations under which prisoners within the reformatory may be allowed to go upon parole outside of the reformatory buildings and inclosures, but to remain while on parole in the legal custody and under the control of the Board of Managers, and subject at any time to be taken back within the inclosure of said

reformatory; and full power to enforce such rules and regulations, and to retake and reimprison any convict so upon parole, is hereby conferred upon said Board, whose written order, certified by its Secretary, shall be a sufficient warrant for all officers named in it to authorize such officers to return to actual custody any conditionally released or paroled prisoner; and it is hereby made the duty of all officers to execute said order the same as ordinary criminal process. The said Board of Managers shall also have power to make all rules and regulations necessary and proper for the employment, discipline, instruction, education, removal, and temporary or conditional release and return, as aforesaid, of all the convicts in said reformatory.

SEC. 6. Whenever there is unoccupied room in the reformatory, the Board of Managers may make requisition upon the Superintendent of Prisons, who shall select such number as is required by such requisition, from among the youthful, well behaved, and most promising convicts in the State Prisons, and transfer them to the reformatory for education and treatment, under the rules and regulations thereof. And the Board of Managers are hereby authorized to receive and retain, during the term of their sentence to the State Prisons, such prisoners so transferred; and the laws applicable to convicts in the State Prisons, so far as they relate to the commutation of imprisonment for good conduct, shall be applicable to said convicts when transferred under this section.

SEC. 7. It shall be the duty of said Board of Managers to maintain such control over all prisoners committed to their custody as shall prevent them from committing crime, but secure their self-support and accomplish their reformation. When any prisoner shall be received into the reformatory, upon direct sentence thereto, they shall cause to be entered in a register the date of such admission, the name, age, nativity, nationality, with such other facts as can be ascertained of parentage, of early social influence, as seem to indicate the constitutional and acquired defects and tendencies of the prisoner, and based upon these, an estimate of the then present condition of the prisoner and the best probable plan of treatment. Upon such register shall be entered quarter-yearly or oftener, minutes of observed improvement or deterioration of character, and notes as to the methods and treatment employed; also all orders or alterations affecting the standing or situation of such prisoner, the circumstances of the final release, and any subsequent facts of the personal history which may be brought to their knowledge.

SEC. 8. The Board of Managers shall, under a system of marks, or otherwise, fix upon a uniform plan, under which they shall determine what number of marks, or what credit shall be earned by each prisoner sentenced under the provisions of this Act, as the condition of increased privileges or of release from their control, which system shall be subject to revision from time to time. Each prisoner so sentenced shall be credited for good personal demeanor, diligence in labor and study, and for results accomplished, and be charged for derelictions, negligences, and offenses. An abstract of the record in the case of each prisoner remaining under control of the said Board of Managers, shall be made up semi-annually, considered by the Managers at a regular meeting, and filed with the Secretary of State, which abstract shall show the date of admission, the age, the then present situation, whether in the Reformatory, State Prison, Asylum, or elsewhere; whether any and how much progress of improvement has been made, and the reason for release or continued custody, as the case may be. The Managers shall establish rules and regulations by which the standing of each prisoner's account of marks or credits shall be made known to him as often as once a month, and oftener, if he shall at any time request it, and may make provision by which any prisoner may see and converse with some one of said Managers during every month. When it appears to the said Managers that there is a strong or reasonable probability that any prisoner will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society, then they shall issue to such prisoner an absolute release from imprisonment, and shall certify the fact of such release, and the grounds thereof, to the Governor. The Governor may thereupon, in his discretion, restore any such prisoner to citizenship. But no petition, or other form of application for the release of any prisoner, shall be entertained by the Managers. Nothing herein contained shall be construed to impair the power of the Governor to grant a pardon or commitment in any case.

SEC. 9. If, through oversight, or otherwise, any person resented to imprisonment in said reformatory for a definite period of time, said sentence shall not, for that reason, be void, but the person so sentenced shall be entitled to the benefit and subject to the liabilities of this Act in the same manner and to the same extent as if the sentence had been in the terms required by section two of this Act, and in such case said managers shall deliver to such offender a copy of this Act and written information of his relation to such Managers.

SEC. 10. Said Managers may appoint suitable persons, in any part of the State, charged with the duty of supervising prisoners who are released on parole, and who shall perform such other lawful duties as may be required of them by the managers; and such persons shall be subject to direction and removal by said Managers, and shall be paid for the duties actually performed under the direction of said Managers a reasonable compensation for their services and expenses, and the same shall be a charge upon and paid from the earnings or other funds of the reformatory.

## CHAPTER V.

## INEQUALITIES OF TERMS OF SENTENCE.

- SEC. 94. Inequalities of sentences.  
 SEC. 95. Remarks of Hon. Robert Pitman on this subject.  
 SEC. 96. Same matter continued.  
 SEC. 97. Tables showing inequalities of sentence, San Quentin.  
 SEC. 98. Tables of prisoners at Folsom.  
 SEC. 99. Jury fixing maximum of punishment.

## SEC. 94. INEQUALITIES OF SENTENCES.

There is no more perplexing question than what should be the length of time to which a person convicted of crime should be sentenced. There, of course, cannot be uniformity, because all crimes do not involve the same moral turpitude, and do not cause the same damage to persons or property. In considering the object of punishment we may say that it should operate (1), by relieving society from one whose presence is a menace to it; (2), by securing the full and permanent reformation of the criminal; and (3), by acting as a deterrent force over others tempted to commit similar offenses. As said by M. de Lamazan, Vice-President of the Tribunal of Vienna, in a preliminary report prepared for the International Penitentiary Congress at Rome, "the most important, and at the same time the most difficult, task which devolves upon a Judge is that of finding a measure by which to apportion justly to each prisoner the duration of his incarceration." It will be admitted that for the same offense as defined by statute, different persons, under different circumstances aggravating or mitigating their crime, should receive different sentences. But it is not right that the same person, for the same offense, should receive a punishment out of all proportion to what he should receive, depending upon the accident of appearing before one or another Judge of the same Court, or from a temporary excitement of the public mind, either with reference to that offense or to that particular offender, or offenders generally. We all know that where several persons believed to be guilty of crime have escaped punishment, there comes a determination on the part of the public more rigidly to enforce the law. As a result some one may be hurried to prison for a long term under this public excitement, who in more placid times would have received a lighter sentence, or possibly might have shown sufficient mitigating circumstances to have escaped punishment altogether.

## SEC. 95. REMARKS OF HON. ROBT. PITMAN ON THIS SUBJECT.

It is said by the Hon. Robert Pitman, of Massachusetts:

It is possible that an observer may greatly err from lack of full knowledge as to the equity of a sentence in any particular case; but the observation and experience of an intelligent overseer of a place of punishment for a long series of years, as to such inequalities, cannot be easily set aside or fail to be correct in its average conclusions. And

the reports of such officers are full of complaints of this evil. Nor do criminals and their counsel fail to recognize, and attempt to profit by, this well understood difference of estimate of punishment by different magistrates. Indeed, with the varying theories, the different temperaments, the different powers of observation, the diverse training and experiences, and the different degrees of tractability and of firmness in our several Judges, such inequalities must arise.

And the practical question to be considered is, how to reduce these inequalities to their minimum.

And here, first, of proposed remedies which we reject.

We have already shown that the law cannot properly prescribe a uniform sentence for the same legal offense, if regard be had to the objects of punishment; and uniform sentences would be manifestly as unjust as they are impolitic. Not only do criminal acts, coming under a single legal appellation, often differ widely in their actual degree of guilt, but many conditions of the actor are essential modifiers of guilt. Thus the age, the intelligence, the degree of temptation, the suddenness, or deliberation, the drunkenness, or other abnormal excitement of the criminal, demand consideration. Some of these considerations have a double aspect when carefully noticed, which it is curious to observe. Take the case of a deliberate assault by a man of wealth, culture, and position, upon some one whose language has offended him. Tried by his deserts, how severe should be the measure of his punishment, compared to that of an ignorant foreigner for a like assault. That a mere fine, in the former case, would, without contrition or apology, be a mockery of justice is evident; but on the other hand, the shortest term of actual imprisonment to such a man would be practically a severer sentence in its physical, and, above all, its mental suffering, than a term of six months to some men. We must then endure the present evils rather than reduce judicial discretion within narrower limits.

Nor can we favor an experiment tried, we believe, to some extent in some States, of having the duration of punishment fixed by the jury instead of the Judge. By the theory of our common law, the peculiar province of the jury is the decision of disputed matters of fact, and the selection and composition of the jury is with special reference to the performance of this single function. The training and experience of the average of jurymen may admirably qualify them to pass a correct estimate upon human conduct and motives, the veracity of witnesses, and the probabilities of testimony, and yet leave them unfitted for the more delicate task of adjusting penalties. The proposed plan would also endanger the integrity of juries. Influences which could not be brought to bear upon them with any hope of success, where the evidence was clear and convincing, to affect their verdict upon the simple issue of guilty or not guilty, might be to a certain extent successful, if the jury had the power to settle, by their arbitrary discretion, the punishment to be awarded. The division of responsibility, too, which would ensue from the secrecy of their deliberations, and the aggregation of their judgments in a single result, would, it is feared, greatly diminish any individual responsibility. Another danger would be that of compromise verdicts—the honest doubts of jurors traded off for mitigation of sentence.

## SEC. 96. SAME MATTER CONTINUED.

And, finally, when we consider the caprices which affect juries where feeling is involved, and the shifting nature of the body itself, it is apparent that the irregularities now complained of would be multiplied instead of diminished. Rejecting these plans, therefore, we now come to consider whether any practical remedies can be found; or, to state the problem more exactly, it is to find what measures will diminish the existing inequalities.

And in this, as in all other reforms, the first step is information. We must actually gauge the nature and extent of the evil to be alleviated. As is well said in reference to another subject, "the local and the special are here to little purpose; it is the general, only, that has value; that is, returns so numerous, and drawn from so wide a field, as to give real significance" to the facts themselves. That is, the public must be apprised that there is not only an occasional and exceptional variation in the standard punishment of similar offenses under similar circumstances, but that such inequality is a constantly recurring phenomenon. But it is evident that the survey of cases must not only be general, but it must be intelligent. To report merely the superficial facts, would sometimes be misleading. The observer must be competent, from mental characteristics and from training, to distinguish between what we have called apparent and real inequalities. In this matter, as in so many others, the establishment in each State of an intelligent and independent Board of Inspectors of Prisons, with a Secretary for an executive officer, of the best available ability, would be found of the greatest advantage. The careful observations and conclusions of such a Board would arrest the public attention and command the public confidence. A candid exposure of the evil would in itself do much to diminish it by calling the attention of the Judges themselves to the inquiry whether the general tendencies were to undue lenity or severity. This work of exploration is evidently of prime necessity.

Wise and able discussion of the different theories of criminal punishment, and of the objects to be attained, will also tend to produce in time a more consistent and harmonious administration of it on the part of magistrates. When certain general principles are established, there will still be room for variation in the application of those principles to existing facts; but a tendency toward uniformity will have been produced.

Another obvious method of reform will be the observance of more care, and the bestowment of more thought, in the matter of individual sentences. In some Courts, especially

those of inferior jurisdiction, the spectacle is often exhibited of hurried and apparently careless infliction of sentences. Even where such sentences, upon the general scale of criminal punishments, rank as among the lighter, the weight of them upon the individual offender may be of great severity. Nor is there less danger of undue lenity. A month's imprisonment of a minor for larceny, or a hitherto virtuous female, may crush the better aspirations of the offenders, and place them for life in the ranks of the criminal classes; while, for one who has already entered upon a career of profligacy, such a sentence would afford but slight protection to society, and have trifling deterrent influence upon the offender. And upon the public, and even upon the criminal himself, the spectacle of an *inconsiderate* infliction of punishment is injurious. The moral impressiveness of punishment depends greatly upon its being administered with thoughtful justice. To give opportunity for deliberation, such time should be fixed for determining all sentences of imprisonment as may afford the prosecuting officer or the friends of the prisoner ample time to lay all the facts before the Court. Especially should there be some provision whereby the Government should be represented before the lower Courts, as they generally are not now, by a responsible public officer, who should feel that he is there to act as a minister of justice.

The haste in determining sentences is most obvious in our lower Courts; but when we compare the time spent every year in hearing applications for pardons from the State Prison with the time spent in fixing the sentences originally, we shall have some reason to believe that, if the latter were extended, the former might be materially abbreviated. Sentences surely ought to be so considerably pronounced as to render the presumption violent against their revision upon the ground of original inequity.

In regard to certain classes of offenses, such as gaming, illegal liquor selling, keeping houses of ill-fame, and the like, where the character of the act is pretty uniform, and the motive of the act is the same, some near approach to a settled scale of sentence might be reached by mutual conference between the Judges of criminal Courts. Some exceptional cases, no doubt, would be found, and some distinction should be made in sentence depending on the persistence of the transgression. But there surely is no reason why the anomaly should exist of a punishment of such offenses by one Judge, as a general rule, by a fine, and by another Judge of the same Court by imprisonment.

There is a well founded tradition that the Chief Justice of one of our New England Courts, having upon one occasion been led to impose a fine upon the mistress of a house of ill-fame, she promptly paid the same to the Sheriff, and sailed magnificently out of Court with a parting salutation: "Thank your honor, I shall make more money than that to-night." The Chief Justice was led by this incident to use his personal influence to procure the passage of a law making imprisonment a compulsory punishment for the offense of keeping such a house. In striking contrast to this is the record of sentences for a year by a criminal Court in one of our large cities in the same State, where, out of one hundred and forty-one sentences for this offense, one hundred and thirty-three were to fine merely, and only eight to imprisonment. Such inequalities in judicial policy evidently need regulation.

In the case of the graver criminal offenses, punishable by long terms of imprisonment in the State Prison, hardly any approach to uniformity of sentence can be antecedently provided for. Crimes of these grades are not easily reducible to fixed classes, but have generally, to a considerable extent an individual and exceptional character. The only practicable way of securing the nearest attainable approach to substantial equality here, seems to be by a provision that sentences in crimes punishable beyond a certain extent of severity, should only be inflicted upon a hearing before two or more Judges of the same Court. In such cases the convict might be temporarily removed after trial to jail, to wait the time when a sentence session of the Court was held; and this session might be at some convenient point for the whole State.

In conclusion, let me say that these suggestions, the fruit of a good deal of thought upon a most difficult problem, are submitted with diffidence. The whole subject of criminal punishment is now undergoing a reëxamination, both as to its principles and its details. The immediate duty of the present hour seems to be the collection of reliable statistics, and the thorough discussion of the lessons which they teach to the philosophical student of human nature.

#### SEC. 97. TABLES SHOWING INEQUALITIES OF SENTENCE, SAN QUENTIN.

For the purpose of showing the inequality of sentences given by different Courts in this State for the same offense, the following tables have been prepared. By glancing at them, it will be seen that sometimes the lightest penalty permissible has been imposed, and at other times the Court has sentenced the offender to the fullest extent allowed by law. Naturally, there will be cases where sentences of undue severity have been pronounced. The only way of rectifying inequalities, where such exist, is at present, by an appeal to executive clemency.

The following list is of prisoners at San Quentin:

#### GRAND LARCENY.

Date of Commitment.	Name.	TERM.		County.
		Yrs.	Mos.	
September 6, 1880	Abrams, David	10		Alameda.
August 21, 1883	Booth, Chas. A.	7		San Francisco.
November 18, 1883	Burns, Chas.	4		Sierra.
January 22, 1886	Barras, Alex.	2		Yolo.
March 12, 1883	Cook, Randolph	6		San Francisco.
October 9, 1885	Cassidy, David	5		Napa.
September 16, 1885	Doughty, Chas.	3		Santa Clara.
December 27, 1884	Elliott, Zachariah	4		San Diego.
September 23, 1884	Flores, Fernando	3		San Mateo.
March 24, 1883	Gonzales, Jesus	5		Fresno.
April 21, 1884	Hurley, Philip	6		San Francisco.
October 30, 1885	Johns, Philo	2		Tulare.
September 10, 1884	Lewis, B. F.	8		Fresno.
March 21, 1883	Mooney, James	5		San Bernardino.
October 20, 1884	Meinhardt, A.	3		San Francisco.
February 9, 1885	McCarthy, James	5		San Francisco.
May 14, 1885	Mitchell, Henry	2		Los Angeles.
September 12, 1885	McDonald, James	1	6	San Bernardino.
September 21, 1885	Martinez, Antonio	7		Santa Barbara.
November 28, 1885	Orantes, Manuel	5		Los Angeles.
September 2, 1885	Sullivan, Wm.	2		Tehama.
August 2, 1886	Silva, Wm.	1		Yuba.
August 2, 1882	Thompson, Henry	7		San Francisco.
July 7, 1886	Wright, Thos. M.	1	6	Alameda.
February 19, 1885	Zapphi, Mariano	2		Solano.

#### BURGLARY—FIRST DEGREE.

Date of Commitment.	Name.	TERM.		County.
		Yrs.	Mos.	
December 6, 1885	Arabena, Albert	1		Contra Costa.
January 31, 1886	Broderick, James	5		Los Angeles.
April 2, 1886	Brown, Robert	1		San Joaquin.
December 6, 1884	Collins, Harry	5		Stanislaus.
February 2, 1886	Calhower, Charles	10		Nevada.
March 16, 1886	Campbell, Scott	1		Stanislaus.
August 28, 1885	Doe, John	7		Los Angeles.
December 25, 1884	Edwards, James	5		San Bernardino.
May 12, 1886	Gregory, Joseph	10		San Francisco.
February 15, 1883	Haskins, Daniel	5		San Mateo.
March 9, 1886	Ross, Charles	3		San Joaquin.
April 21, 1886	Robinson, Charles	1		San Joaquin.
July 24, 1885	Jaramillo, Carlos	3	6	San Bernardino.
May 11, 1886	Johnson, H. B.	12		San Francisco.
March 15, 1886	Kent, Edward	5		Los Angeles.
June 26, 1886	Kringle, Reginald	10		Butte.
July 5, 1884	Lewis, John	3		Shasta.
April 13, 1886	Lingle, J. W.	1		San Bernardino.
September 15, 1884	McKee, John	10		San Francisco.
September 23, 1884	McClemmy, John	5		Sonoma.
April 5, 1886	McDonald, Walter	1		Shasta.
September 20, 1885	Monahan, Hugh	5		San Francisco.
June 23, 1885	Apple, Henry	2		Alameda.



## ARSON.

Date of Commitment.	Name.	TERM.		County.
		Yrs.	Mos.	
December 24, 1884.	Castro, R.	6		Santa Cruz.
December 6, 1880.	Dillon, Patrick.	10		Santa Clara.
December 22, 1884.	Daigneau, Edward.	10		San Francisco.
October 21, 1882.	Enright, Thomas.	5	6	San Joaquin.
January 5, 1886.	Ethridge, P. L.	1		Sonoma.
August 18, 1882.	Horan, P. D.	5		San Francisco.
January 15, 1885.	Martin, H.	3		Napa.
October 15, 1882.	Poggi, J. B.	10		Tuolumne.
January 1, 1886.	Robles, F.	6		Monterey.

## BURGLARY—SECOND DEGREE.

Date of Commitment.	Name.	TERM.		County.
		Yrs.	Mos.	
June 24, 1886.	Anderson, Thomas.	1	6	Sacramento.
July 17, 1884.	Blomberg, Edward.	3		Napa.
July 12, 1885.	Boyle, Robert.	2		Contra Costa.
October 29, 1883.	Coyle, George.	5		San Francisco.
May 13, 1885.	Dunn, John.	5		Santa Clara.
April 10, 1886.	Dunlap, L.	1		Plumas.
May 2, 1886.	Ellis, David.	2	6	Nevada.
June 13, 1886.	Fox, Joe.	1		San Diego.
September 24, 1885.	Libby, Henry.	3		San Francisco.
January 16, 1886.	Lyons, Walter.	5		Santa Clara.
April 21, 1884.	Moeller, Frederick.	5		San Bernardino.
August 24, 1885.	Malindeo, A.	3		San Bernardino.
June 13, 1886.	Nelson, William.	1		San Diego.
February 19, 1886.	O'Connor, James.	2	6	Los Angeles.
October 23, 1885.	Rutherford, Joseph.	1	2	Monterey.
November 3, 1885.	Ryan, Thomas.	3		Shasta.
December 10, 1883.	Shell, Guy.	4		Tehama.
May 6, 1886.	Stanley, James.	3		San Francisco.
June 29, 1886.	St. Clair, Eugene.	1	6	San Bernardino.
August 3, 1886.	Turner, Edward.	1		Colusa.

## ROBBERY.

Date of Commitment.	Name.	TERM.		County.
		Yrs.	Mos.	
February 18, 1885.	Aldrich, L.	9		Calaveras.
March 10, 1886.	Carter, J.	3		San Bernardino.
November 16, 1882.	Dougherty, W.	8		San Francisco.
November 14, 1884.	Dwyer, J.	5		Mendocino.
August 11, 1878.	Green, W. E.	13		San Joaquin.
June 22, 1884.	Glover, E.	5		Shasta.
January 2, 1885.	Farrell, T. J.	1	6	Los Angeles.
September 19, 1884.	Herbert, J. M.	20		Fresno.
March 16, 1886.	Hamilton, J. W.	5		Mendocino.
April 13, 1884.	Johnson, T.	12		San Bernardino.
October 18, 1877.	Machado, J.	14		Sierra.
September 23, 1877.	Lugo, C.	15		Kern.
October 17, 1877.	Barber, J.	15		Siskiyou.
May 22, 1886.	Lee, C.	3		San Bernardino.
November 28, 1880.	McKay, J.	8		Alameda.
June 9, 1885.	King, W.	25		San Francisco.
December 17, 1885.	Reardon, J.	2		Santa Clara.
July 22, 1886.	Burns, H.	1		Placer.
July 22, 1886.	Thomas, G.	1		Placer.
April 16, 1885.	Clark, W.	20		San Francisco.

## MANSLAUGHTER.

Date of Commitment.	Name.	TERM.		County.
		Yrs.	Mos.	
March 11, 1885.	Avila, Epiphania.	5		Los Angeles.
July 17, 1886.	Bejil, Eustacio.	10		San Luis Obispo.
August 3, 1886.	Bautista, Juan.	1		San Diego.
October 13, 1885.	Carney, Michael.	8		Solano.
November 14, 1885.	Cavanaugh, Garratt.	4		Amador.
February 13, 1884.	Desmond, John.	5		Solano.
September 19, 1884.	Fornari, Carlos.	3		Fresno.
November 6, 1885.	Figuera, Jesus.	10		Los Angeles.
November 12, 1881.	Garcia, Manuel.	8		Santa Barbara.
June 11, 1884.	Higuera, Manuel.	7		Monterey.
July 12, 1886.	Havelin, Michael.	1		Mono.
March 23, 1886.	Johnson, A. B.	10		Sonoma.
September 28, 1885.	Kessler, John.	5		Amador.
November 15, 1880.	Leehon, Dan.	10		San Francisco.
October 13, 1885.	Levieux, F. P.	4		San Francisco.
June 7, 1883.	Mathews, Robert.	7		Lake.
August 22, 1885.	Nowlin, W. S.	8		Trinity.
September 5, 1885.	Vierra, J. F.	2		Fresno.
December 4, 1885.	Daniel, Augustus.	6		San Francisco.
March 2, 1885.	McCarthy, Eugene.	10		San Francisco.

## MURDER—SECOND DEGREE.

Date of Commitment.	Name.	TERM.		County.
		Yrs.	Mos.	
March 12, 1886.	Angulo, A.	12		Kern.
May 23, 1878.	Barza, Jas.	20		Butte.
February 8, 1885.	Biggins, Pat'k.	35		Fresno.
October 6, 1885.	Broder, Frank.	10		Inyo.
December 30, 1881.	Cochran, Jas.	36		Kern.
February 9, 1885.	Coakley, Jas.	15		San Francisco.
June 29, 1880.	Donnelly, Edw'd.	20		Alameda.
November 7, 1885.	Estrada, J. M.	20		Kern.
August 5, 1882.	Encinas, J. M.	12		Los Angeles.
June 8, 1879.	Guzman, Geo.	20		Tulare.
September 16, 1884.	Higuera, Manuel.	50		Los Angeles.
December 25, 1885.	Knapp, J. D.	21		Humboldt.
February 4, 1886.	Kester, J.	12		Trinity.
September 21, 1881.	Leon, J.	20		Los Angeles.
February 16, 1883.	Lopez, A.	10		San Diego.
February 22, 1884.	Lyle, Robert.	20		Contra Costa.
December 15, 1884.	Lefebre, Gaspar.	15		San Francisco.
June 1, 1881.	Morrow, Joe.	18		Butte.
May 26, 1885.	Newby, H. C.	13		Sonoma.
December 22, 1882.	Wilson, C. H.	30		Tulare.

## SEC. 98. TABLES OF PRISONERS AT FOLSOM.

And the following list is made up of prisoners at Folsom:

## ARSON—SECOND DEGREE.

Reg- ister No.	Name.	Date of Commitment.	TERM.		County.
			Yrs.	Mos.	
719	Lee Hung	January 17, 1884	5		Sacramento.
1113	James Bee (2 com'ts)	June 16, 1885	20		Santa Clara.
1205	Vicente Moraga	December 7, 1885	5		Santa Barbara.
1206	Roquia Gonzales (2 com'ts)	December 7, 1885	11		Santa Barbara.
1317	Guiseppa Giacomella	May 1, 1886	4		Santa Clara.

## ASSAULT TO MURDER.

Reg- ister No.	Name.	Date of Commitment.	TERM.		County.
			Yrs.	Mos.	
95	Frank Larisch	October 28, 1878	14		Plumas
263	Charles Melvin (prior)	November 22, 1880	14		San Francisco
459	Ignacio Tejada	January 24, 1882	7		Santa Cruz
565	Ung Goon	March 30, 1883	7		Trinity
657	Chum Yee	October 15, 1883	5		Stanislaus
808	Losiano Sorano	July 17, 1880	10		San Francisco
866	Tong Ah Jung	May 21, 1884	5		Sacramento
908	Antonio Buelna	July 22, 1884	8		Santa Barbara
917	Frank Marsh	August 24, 1884	9		Trinity
982	Ah Hing	December 16, 1884	5		Yuba
1073	Emanuel Garcia	April 1, 1885	8		Santa Barbara
1120	Allie Hulse (2 com'ts)	June 25, 1885	7		Merced
1122	Miguel Angulo	June 27, 1885	3		Santa Barbara
1138	Urgele Veaux	July 31, 1885	10		Alpine
1154	Ah Toon	September 7, 1885	14		Trinity
1236	Andres Mahea	January 7, 1886	6		Alameda
1284	Richard Stepney	March 11, 1886	14		Colusa
1351	Frank Felix	June 30, 1886	4		El Dorado

## BURGLARY OF THE FIRST DEGREE.

Reg- ister No.	Name.	Date of Commitment.	TERM.		County.
			Yrs.	Mos.	
349	Davidson Reed	July 2, 1881	15		Nevada
390	Daniel Carmac	December 12, 1881	6		Stanislaus
432	William Gregg (prior)	March 24, 1881	10		Alameda
449	John Hanson	February 28, 1882	6		San Francisco
499	Frank Pruitt	August 17, 1882	10		San Francisco
504	Wong Bak Ling	August 29, 1882	6		San Francisco
462	Patrick Hurley (prior)	March 24, 1881	10		Alameda
479	Charles Robertson	May 25, 1882	5		Sacramento
480	Henry Wilson	May 25, 1882	7		Sacramento
548	John Brown	December 28, 1882	10		Sacramento
559	Orve Ah Joe	March 2, 1883	5		San Francisco
578	Tong Kie	April 11, 1883	5		El Dorado
601	John Brennan	May 15, 1883	15		San Francisco
602	Henry Stubbs	May 15, 1883	12		San Francisco
619	William Clancey (prior)	June 23, 1883	16		Santa Cruz
639	Precillio Campoy	September 11, 1883	10		Tehama
642	C. Lonnigan	September 12, 1883	8		San Francisco
664	Harry Lindley	October 23, 1883	5		San Francisco
692	Edward Fitzgerald	November 28, 1883	6		Los Angeles
693	Thomas Jones	December 5, 1883	10		Los Angeles
717	Lee Ben	January 15, 1884	5		San Francisco
743	Henry Baker (prior)	February 12, 1884	15		San Francisco
724	James Brown	January 25, 1884	5		San Francisco
753	Charles Adams	February 28, 1884	5		San Francisco
767	John Donovan	April 8, 1884	10		San Francisco
771	John O'Keefe	April 12, 1884	5		San Francisco
778	Frank Johnson	April 22, 1884	7		San Francisco
780	Roger O'Meara	April 12, 1884	6		San Francisco
783	William Cullen	April 24, 1884	6		San Francisco
787	J. B. Webster	April 29, 1884	5		San Francisco
792	M. Bird (2 com'ts)	April 30, 1884	5		San Francisco
794	William Taylor	May 3, 1884	8		Solano
793	Thomas Clifford	May 3, 1884	3		Solano
813	William McGregor (prior)	February 17, 1881	12		San Francisco
875	Chin Ah Lee	June 3, 1884	5		San Francisco
883	Thomas Righetti	June 16, 1884	5		San Luis Obispo
889	John McCabe	June 28, 1884	2		Yolo
893	Walter T. J. Stevens	July 9, 1884	3	6	Alameda
902	Thomas Kelly	July 17, 1884	10		Sacramento
903	George Ennis	July 18, 1884	10		Sacramento

## BURGLARY OF THE FIRST DEGREE—Continued.

Reg- ister No.	Name.	Date of Commitment.	TERM.		County.
			Yrs.	Mos.	
907	Albert Oles	July 18, 1884	5		San Francisco
874	Yee Ah Sing	June 3, 1884	5		San Francisco
883	Michael Forhan	November 27, 1882	10		Solano
834	Harry Edwards	July 30, 1883	10		San Francisco
916	William Cole (2 com'ts)	August 22, 1884	4		Alameda
980	George Brown	September 17, 1884	5		San Francisco
931	Charles Conlin	September 17, 1884	7		San Francisco
932	Mark M. Lay	September 17, 1884	14		San Francisco
933	John McGilver	September 17, 1884	15		San Francisco
934	Thomas Casey	September 19, 1884	5		Tehama
940	Henry Coogan	September 4, 1884	10		Napa
968	Chin Ah Sam	November 11, 1884	8		San Francisco
970	William Burns	November 14, 1884	6		Sacramento
975	Gus Arrin	November 18, 1884	10		Santa Clara
999	William Smidt	January 8, 1885	10		San Francisco
1000	Joseph Poisson	January 8, 1885	14		San Francisco
1003	Harry Lowe	January 13, 1885	10		Sacramento
1018	Joseph Gibbons	February 3, 1885	5		San Francisco
1019	Dick Reeves (prior)	February 4, 1885	16		Sacramento
1028	James Mahoney	February 18, 1885	3		San Francisco
1031	Ah Tie	February 18, 1885	3		Sacramento
1034	Charles Thompson	February 25, 1885	3		San Francisco
1035	Christian Becker	February 25, 1885	5		San Francisco
1038	Julius Francis Lafayette (prior)	February 28, 1885	15		San Francisco
1040	Ah Loine	February 28, 1885	2		Sacramento
1041	John Davis	February 28, 1885	3		Sacramento
1042	James Anderson	March 3, 1885	2		Stanislaus
1045	William Mitchell	March 4, 1885	6		San Francisco
1048	Ah Fong	March 4, 1885	5		Sonoma
1051	John Carroll	March 6, 1885	10		San Francisco
1062	Ah Him	March 24, 1885	2	6	Alameda
1035	Wong How	March 25, 1885	8		San Francisco
1067	Jack Acker (prior)	March 27, 1885	20		Sacramento
1071	Matt. Duffy	April 11, 1885	10		San Francisco
1078	Thomas White	April 8, 1885	4		Sacramento
1082	Joe Marshall (3 comt. and prior)	April 16, 1885	30		Sacramento
1089	Henry M. Bays	April 24, 1885	15		San Francisco
1090	William Owens (prior)	April 25, 1885	18		Alameda
1092	Long Ah Lee	May 2, 1885	15		San Francisco
1097	Harry Connors	May 7, 1885	15		San Francisco
1098	Frank Musgrave	May 7, 1885	5		San Francisco
1099	James C. Johnson	May 9, 1885	12		San Francisco
1105	Thomas P. Wilson	May 19, 1885	7		San Francisco
1132	Sanford C. Campbell	July 18, 1885	5		Mendocino
1142	Charles Johnson	August 13, 1885	15		San Joaquin
1152	Terry McMorry	September 4, 1885	2		Sacramento
1153	William Allison	September 4, 1885	5		San Francisco
1156	John Price	September 12, 1885	2		Solano
1164	Robert Palmer	September 26, 1885	2		Solano
1169	Antonio Arza	October 6, 1885	2		Santa Barbara
1171	Thomas Quigley	October 7, 1885	2		Alameda
1178	Eugene Grant	October 15, 1885	1	6	San Francisco
1185	R. Rutherford	October 23, 1885	4		Ventura
1186	Lewis Maynard	October 26, 1885	4		Ventura
1188	Charles Davy	October 30, 1885	5		San Francisco
1194	E. G. Graves	November 9, 1885	7		Ventura
1196	James Browne (2 com'ts.)	November 13, 1885	29		Tehama
1197	Tom Davis	November 13, 1885	2		Yuba
1203	Joseph Gibbons	November 30, 1885	8		San Francisco
1212	Ah Hung	December 12, 1885	4		Sacramento
1227	Peter McGann	December 29, 1885	1		San Joaquin
1238	George Ross	December 31, 1885	14		San Francisco
1229	Charles Weiss	January 1, 1886	1		San Joaquin
1238	Fred Lecari	January 9, 1886	2		San Francisco
1241	Theodore Tyler	January 12, 1886	10		San Francisco
1248	Mike Gallagher	January 16, 1886	3		Sacramento
1251	Jesse Thornton	January 18, 1886	8		San Francisco
1254	James Collins	January 19, 1886	1	6	Sacramento

## BURGLARY OF THE FIRST DEGREE—Continued.

Reg- ister No.	Name.	Date of Commitment.	TERM.		County.
			Yrs.	Mos.	
1257	William Harrison	January 26, 1886	8		San Francisco.
1261	James Bartlett	January 28, 1886	3		Santa Clara.
1265	Juan Mesa (3 com'ts.)	February 8, 1886	9		Ventura.
1268	Jack Ozzen	February 13, 1886	2		San Francisco.
1274	Clarence W. Van Ness	February 20, 1886	4		San Francisco.
1278	Dick Larkin	March 5, 1886	10		Butte.
1286	Frank Edes	March 13, 1886	5		Alameda.
1292	James Reeves	March 20, 1886	5		Sacramento.
1300	James Connors	March 30, 1886	5		Alameda.
1301	Joseph Hughes	April 6, 1886	3		San Francisco.
1305	Frank E. Jones	April 13, 1886	7		San Francisco.
1310	John Cotton	April 19, 1886	8		San Francisco.
1313	Charles F. Acker	April 23, 1886	5		Sacramento.
1316	Ah Lin	May 1, 1886	1	6	Sacramento.
1323	James Simpson	May 6, 1886	2		San Francisco.
1324	Paul Jackson	May 8, 1886	5		San Francisco.
1326	Augustus Pierce	May 10, 1886	3		Santa Clara.
1344	James Hennessy	June 18, 1886	5		Sacramento.
1345	Milton McGee (prior)	June 22, 1886	60		Butte.
1346	Charles Taylor (4 com'ts.)	June 22, 1886	42		Butte.
1347	Ah Mee	June 26, 1886	1		Sacramento.
1348	Ah Soon	June 26, 1886	1		Sacramento.
1350	Ah Hing	June 28, 1886	8		Sacramento.
1332	Charles Harpe	November 6, 1883	5		Monterey.

## BURGLARY—SECOND DEGREE.

Reg- ister No.	Name.	Date of Commitment.	TERM.		County.
			Yrs.	Mos.	
568	James Cassidy	April 3, 1883	5		San Francisco.
622	Charles W. Kelly	June 26, 1883	5		San Francisco.
630	Mark Pemberton	July 31, 1883	5		San Francisco.
650	Wong Ah Fong	October 2, 1883	5		San Francisco.
659	John Hogan	October 16, 1883	5		San Francisco.
667	Dan. Sullivan	October 30, 1883	5		San Francisco.
683	Chewes Sewey	November 14, 1883	5		San Francisco.
684	John Darn	November 16, 1883	5		San Francisco.
699	Joseph McClelland (2 com'ts)	December 11, 1883	7		San Francisco.
728	John Hardy	January 29, 1884	4		San Francisco.
739	Thomas Mitchell	February 6, 1884	5		San Francisco.
740	Daniel Clark	February 12, 1884	5		San Francisco.
747	Thomas Dooley	February 19, 1884	5		San Francisco.
749	Joseph Simon	February 19, 1884	5		San Francisco.
752	Charles Monahan	February 25, 1884	5		Sacramento.
770	Henry Deneke	April 12, 1884	5		San Francisco.
784	Ng Bark	April 24, 1884	5		San Francisco.
820	Thomas Kane	June 1, 1883	5		Sacramento.
821	Andrew Kane (prior)	February 18, 1884	15		San Francisco.
873	Chin Ah You	May 30, 1884	5		San Francisco.
884	Edward Porter	June 17, 1884	5		San Francisco.
887	Lee Ah Lee	June 24, 1884	3		San Francisco.
905	Ah Kee	July 19, 1884	5		Sacramento.
906	William Towsey	July 22, 1884	5		San Francisco.
910	Fred. Burkey (2 com'ts)	August 2, 1884	3	6	Alameda.
938	John Fitch	September 26, 1884	1		Yuba.
939	Ah Doe	September 29, 1884	5		Sacramento.
965	Jack Johnson	November 3, 1884	5		Sacramento.
967	Ah Win	November 11, 1884	5		San Francisco.
977	Lee Ah Woo	November 19, 1884	5		San Francisco.
1002	Richard Elston	January 13, 1885	2		Sacramento.
1005	Frank Wilson	January 14, 1885	5		San Francisco.
1006	Daniel Sullivan	January 14, 1885	4		San Francisco.
1021	Charles Sampson	February 10, 1885	4		Alameda.

## BURGLARY—SECOND DEGREE—Continued.

Reg- ister No.	Name.	Date of Commitment.	TERM.		County.
			Yrs.	Mos.	
1024	Charles Brown	February 11, 1885	5		San Francisco.
1025	Al Tryon	February 13, 1885	6		Sacramento.
1039	Frank Livingston	February 28, 1885	10		San Francisco.
1027	Cornelius Sweeney	February 18, 1885	5		San Francisco.
1043	Charles B. Pierson	May 4, 1885	2		San Francisco.
1056	Edward Friel	March 11, 1885	5		Sacramento.
1031	Gun Dock	March 24, 1885	2	6	Alameda.
1038	John Conway	March 30, 1885	4	6	Alameda.
1081	Fred. Heins	April 14, 1885	5		San Francisco.
1083	Patrick Hays	April 20, 1885	2		Sacramento.
1085	Edward White	April 21, 1885	4		San Francisco.
1093	Wong Ah Cum	May 2, 1885	5		San Francisco.
1094	James Powers	May 5, 1885	5		San Francisco.
1123	Leong Ying	July 2, 1885	3		San Francisco.
1139	Charles Frazier	August 3, 1885	3		San Francisco.
1140	George Johnson	August 4, 1885	3		Colusa.
1141	James Brown	August 5, 1885	5		San Francisco.
1143	Derrick E. Brockway	August 13, 1885	3		Alameda.
1145	Michael Higgins	August 25, 1885	4		Alameda.
1147	James Claughley	August 26, 1885	1	6	Yuba.
1166	Charles Reed	September 30, 1885	5		San Francisco.
1174	George Howard	October 10, 1885	5		San Francisco.
1176	John Alsop	October 13, 1885	2		Alameda.
1187	Louis Simons	October 27, 1885	5		San Francisco.
1189	Frank Moran	November 4, 1885	5		San Francisco.
1199	Ah Sing	November 14, 1885	2		Sacramento.
1207	John Linde	December 8, 1885	3		San Joaquin.
1208	Joseph Fogarty	December 8, 1885	4		San Francisco.
1215	James Cleary	December 16, 1885	5		San Francisco.
1219	William Campbell	December 18, 1885	5		El Dorado.
1220	Moh Ng Goyey	December 19, 1885	5		San Francisco.
1225	Robert McClusky	December 19, 1885	2		Butte.
1231	Charles Meyer	January 6, 1886	5		San Francisco.
1235	William Howard	January 7, 1886	1		Alameda.
1240	Charles Nicholas	January 9, 1886	1		Alameda.
1242	William Rice	January 12, 1886	5		San Francisco.
1244	John Kelly	January 14, 1886	4		San Francisco.
1250	Thomas Murray	January 18, 1886	5		Sacramento.
1264	D. J. Lacy (2 com'ts)	February 5, 1886	9		San Francisco.
1270	Henry Dietrick (5 priors)	February 16, 1886	10		San Francisco.
1271	Charles Lowry	February 18, 1886	2		Amador.
1272	Charles Bush (priors)	February 19, 1886	8		San Francisco.
1275	William Lyons	February 23, 1886	5		San Francisco.
1277	James Kelly	March 1, 1886	10		Yuba.
1283	Ah Chung	March 8, 1886	2	6	San Joaquin.
1289	Ah Chung	March 17, 1886	3		Sacramento.
1291	Morgan Sweeney	March 20, 1886	2		San Francisco.
1296	John Smith	March 25, 1886	5		San Francisco.
1315	A. P. Johnson	May 1, 1886	1		Sacramento.
1319	José Guerrero	May 4, 1886	2		Ventura.
1322	Martin Brown	May 6, 1886	4		San Francisco.
1325	Joong Ah Sing	May 8, 1886	2	6	San Francisco.
1328	Len Ok	May 13, 1886	6		Alameda.
1331	Frank Rivas	May 24, 1886	2		Santa Barbara.
1333	Alexander Billiard	May 31, 1886	1		Ventura.
1334	James Smith	June 1, 1886	3		Sacramento.
1335	Foo Lee	June 2, 1886	1	6	Alameda.
1336	Frank Beal	June 2, 1886	6		Alameda.
1338	Frank Wilson	June 5, 1886	2		San Francisco.
1339	Frank Watson	June 5, 1886	1	6	San Francisco.
1340	Ah Fan	June 7, 1886	1		Sacramento.
1341	Jacob Fuller	June 9, 1886	8		Yuba.
1343	Adolph Chatty	June 16, 1886	5		Alameda.



## GRAND LARCENY.

Reg- ister No.	Name.	Date of Commitment.	TERM.		County.
			Yrs.	Mos.	
435	E. C. Burke (2 com'ts)	October 12, 1880	15		Fresno
505	Felipe Higuera	August 30, 1882	10		Santa Clara
512	William Dunlap	September 19, 1882	10		San Francisco
591	Henry Harper	May 1, 1883	10		San Francisco
593	Wong Ah Hick	May 1, 1883	10		San Francisco
607	Peter Korbell	May 30, 1883	5		San Francisco
610	Ah Lem	June 7, 1883	5		Sacramento
616	John Johnson	June 19, 1883	6		San Francisco
617	Adolph Ganz	June 19, 1883	5		San Francisco
621	Patrick Welch	June 26, 1883	6		San Francisco
629	Wong Ah King	July 31, 1883	7		San Francisco
633	Charles Hancock (2 com'ts)	August 18, 1883	10		San Francisco
644	Robert Stagle	September 25, 1883	5		San Francisco
649	Robert Robinson	October 2, 1883	10		San Francisco
654	H. C. Benson	October 4, 1883	5		Los Angeles
663	John Romans	October 23, 1883	5		San Francisco
726	John Wilder Smith	January 26, 1884	6		Santa Clara
734	William Love	February 5, 1884	6		Sacramento
742	James Perry	February 12, 1884	4		San Francisco
744	Leong Ah Sing (prior)	February 12, 1884	10		San Francisco
756	James Bennett	March 19, 1884	5		San Francisco
757	Thomas Moore	March 19, 1884	6		San Francisco
781	John Allen	April 22, 1884	6		San Francisco
802	Carlos Sanchez (2 com'ts)	December 5, 1883	12		Fresno
805	Andronica Sepulveda (2 com'ts)	February 18, 1880	15		Monterey
826	John Shehan	May 6, 1884	14		San Francisco
846	George Merrill (priors)	May 17, 1881	10		San Francisco
848	James Turner	May 8, 1884	6		San Francisco
849	Frank Laboquet	May 8, 1884	8		San Francisco
861	John Tracy	May 17, 1884	8		Alameda
862	Frank Desmond	May 17, 1884	8		Alameda
863	John Dolan	May 20, 1884	3		Sacramento
864	Frank Smith	May 20, 1884	3		Sacramento
865	Jim Lee	May 21, 1884	2		Sacramento
872	G. B. White	May 29, 1884	4		Solano
876	Dennis O'Brien	June 5, 1884	10		San Francisco
885	David Condon	June 17, 1884	7		San Francisco
894	John Friel	July 10, 1884	10		San Francisco
895	John Jennings	July 10, 1884	10		San Francisco
896	August Seidel	July 11, 1884	7		San Francisco
921	William Tyndall	September 3, 1884	6		Nevada
922	George Shields	September 3, 1884	6		Nevada
924	Charles McAllister	September 8, 1884	8		Sacramento
928	Spencer Swift	September 12, 1884	8		Colusa
942	Antonio Rinz	October 7, 1884	3		Santa Barbara
944	Victorino Olivas	October 7, 1884	7		San Luis Obispo
945	Preciliano Sanes	October 7, 1884	7		San Luis Obispo
948	James Kirby (2 com'ts)	October 9, 1884	10		Solano
949	John Williamson (2 com'ts)	October 9, 1884	5		Solano
955	Robert Rae	October 15, 1884	10		Sacramento
960	George Friedell	October 23, 1884	1	6	Sonoma
961	Frank Golden	October 30, 1884	9		Sacramento
962	Frank Daley	October 30, 1884	9		Sacramento
963	George Morgan	October 30, 1884	5		Sacramento
969	B. Lewandowski	November 14, 1884	9	10	San Francisco
1004	W. H. Murphy	January 13, 1885	4		Sacramento
1036	Joseph Miller	February 25, 1885	10		San Francisco
1047	Henry Howe	March 4, 1885	5		Sonoma
1050	Daniel Murray	March 6, 1885	10		San Francisco
1059	Albert Williams	March 18, 1885	8		San Francisco
1060	Ah Yee	March 24, 1885	3		Alameda
1077	George W. Turner	April 7, 1885	4		Merced
1080	John Swartz	April 14, 1885	7		San Francisco
1096	John McDonald	May 6, 1885	5		San Francisco
1100	Ah Hing	May 9, 1885	6		San Francisco
1106	Charles Coffran	May 22, 1885	5		Yuba
1107	Henry Fleming	May 22, 1885	5		Yuba
1109	José Valenuello	June 1, 1885	4		Sacramento

## GRAND LARCENY—Continued.

Reg- ister No.	Name.	Date of Commitment.	TERM.		County.
			Yrs.	Mos.	
1110	Charles Rousseaus	June 4, 1885	5		San Bernardino.
1111	H. Day	June 11, 1885	4		Yolo.
1121	William F. Morrison	June 26, 1885	10		San Francisco.
1121	James Wilson	July 20, 1885	10		San Francisco.
1133	William Bowen	July 21, 1885	5		San Joaquin.
1134	Juan Galindo	August 29, 1885	4		Stanislaus.
1148	Frank Jones	September 30, 1885	3		Ventura.
1165	José Pedro Peres (2 com'ts)	October 2, 1885	10		San Luis Obispo.
1167	John Fink	October 3, 1885	10		San Francisco.
1168	Joseph A. Sankey	October 13, 1885	2		Alameda.
1175	Alonzo Murray	October 15, 1885	2		Sacramento.
1179	Thomas McCrory	October 23, 1885	3		Tehama.
1183	Giovanni Barili	October 23, 1885	10		San Francisco.
1184	Alvino F. Pico	November 10, 1885	7		San Francisco.
1195	William Miller	November 28, 1885	3		Butte.
1202	Henry Bowman	December 14, 1885	3		Sacramento.
1213	Thomas Nelson	December 16, 1885	6		San Francisco.
1222	Matthew Kerley	December 22, 1885	6		San Francisco.
1226	William Smith	December 29, 1885	1		Amador.
1243	Isabella Reese	January 13, 1886	3		San Francisco.
1246	Al Cornwall	January 14, 1886	2		Tulare.
1252	Estevan Miron	January 18, 1886	3		Ventura.
1256	Henry Payne	January 25, 1886	1		Yolo.
1259	Frank Blake	January 27, 1886	3		Yolo.
1267	Henry Whitney	February 9, 1886	3		Sacramento.
1279	Antonio Castro	March 5, 1886	5		Ventura.
1295	C. F. Bacon	March 23, 1886	1		Tulare.
1314	Frank Bolinger	April 24, 1886	1		Tulare.
1329	Jeremiah Murphy	May 13, 1886	2		Santa Clara.
1337	James Loder	June 3, 1886	10		San Francisco.

## MURDER, SECOND DEGREE.

Reg- ister No.	Name.	Date of Commitment.	TERM.		County.
			Yrs.	Mos.	
158	Ah Yen	December 24, 1879	28		Contra Costa.
170	Thomas Banks	March 20, 1875	25		San Francisco.
199	Elias Marks	August 18, 1879	12		Mendocino.
421	Charles Bennett	February 13, 1882	20		Fresno.
422	Thomas Herbert	February 1, 1882	50		Kern.
450	Trinidad German	December 26, 1877	Life		Santa Barbara.
484	James Smith	May 31, 1882	15		Yolo.
555	Lowell J. Maxwell	February 9, 1883	10		Plumas.
628	Rosalie Ybarra	July 27, 1883	20		Sacramento.
669	Manuel Pauletto	October 30, 1883	15		El Dorado.
674	F. L. Wood	November 2, 1883	Life		Stanislaus.
768	Lee Ah Wing	April 9, 1884	50		Alameda.
799	Peter Rooney	March 27, 1883	Life		Stanislaus.
877	Peter O'Laughlin	June 6, 1884	4	9	Alameda.
882	J. M. Porter	June 14, 1884	Life		Sacramento.
994	Timothy Buckley	January 5, 1885	18		Yuba.
1064	Harry Brown	March 25, 1885	55		San Francisco.
1074	Indian Lee	April 3, 1885	40		Tuolumne.
1130	John Comisello	July 18, 1885	15		Mendocino.
1158	George T. Thomson	September 16, 1885	Life		San Francisco.
1180	Melvin Congdon	October 22, 1885	25		San Luis Obispo.
1232	Hoo Ah Fook	January 7, 1886	25		San Francisco.
1306	Thomas L. Westlake	February 17, 1883	25		Shasta.
1307	E. Chapman	February 23, 1881	22		Butte.

## MANSLAUGHTER.

Reg- ister No.	Name.	Date of Commitment.	TERM.		County.
			Yrs.	Mos.	
599	Woo Ah Fook .....	May 9, 1883 .....	10	---	San Francisco
618	W. C. Applegate .....	June 20, 1883 .....	10	---	Colusa
718	John B. Franklin .....	January 16, 1884 .....	10	---	Modoc
803	Willis Sumner .....	November 20, 1883 .....	10	---	Merced
810	Angelo Franzo .....	June 15, 1883 .....	5	---	Placer
818	Joseph Kenn .....	December 3, 1881 .....	10	---	San Francisco
990	John Munn .....	December 30, 1884 .....	10	---	Stanislaus
1026	A. W. Smith .....	February 13, 1885 .....	8	---	Nevada
1088	William McKuan .....	April 23, 1885 .....	10	---	Nevada
1117	Charles Guerrero .....	June 22, 1885 .....	10	---	San Luis Obispo
1119	George Kelly .....	June 23, 1885 .....	8	---	Solano
926	Louis Webber .....	September 9, 1884 .....	2	6	San Francisco
1126	José Garcia .....	July 13, 1885 .....	10	---	San Joaquin

## ROBBERY.

Reg- ister No.	Name.	Date of Commitment.	TERM.		County.
			Yrs.	Mos.	
174	Peter Dalton .....	May 27, 1880 .....	34	---	Nevada
204	Frederick Gilletti .....	March 12, 1877 .....	10	---	Kern
438	Emile Modesto .....	May 22, 1880 .....	12	---	San Francisco
442	Frederick Brand .....	November 21, 1881 .....	15	---	San Francisco
414	John Wright .....	February 8, 1882 .....	15	---	Alameda
560	William Armstrong .....	March 21, 1883 .....	5	---	San Francisco
460	William A. Miller .....	December 21, 1881 .....	25	---	Tuolumne
461	Henry Riley .....	June 21, 1881 .....	Life	---	San Francisco
470	Dick Fellows .....	April 6, 1882 .....	Life	---	Santa Barbara
572	Daniel McCarty .....	April 3, 1883 .....	12	---	Monterey
612	Peter Alberts .....	June 12, 1883 .....	10	---	San Francisco
627	Alex. Duckworth .....	July 17, 1883 .....	7	---	San Francisco
660	John Caste .....	October 16, 1883 .....	6	---	San Francisco
662	Peter Stanley (2 priors) .....	October 23, 1883 .....	Life	---	San Francisco
665	Cad Bryant .....	October 23, 1883 .....	20	---	San Francisco
677	Manuel Romero .....	November 6, 1883 .....	10	---	San Francisco
682	Charles Brown .....	November 13, 1883 .....	25	---	Sacramento
714	William Stewart .....	January 15, 1884 .....	4	---	San Francisco
715	William McNamara .....	January 15, 1884 .....	4	---	San Francisco
766	Patrick Bourke .....	April 8, 1884 .....	7	---	San Francisco
774	George Foster .....	April 16, 1884 .....	8	---	San Francisco
775	Chum Ah Guy .....	April 19, 1884 .....	25	---	San Francisco
814	John Markey .....	July 18, 1884 .....	8	---	San Francisco
839	John Coughlin .....	September 27, 1882 .....	8	---	San Francisco
851	John William Hicks .....	May 11, 1884 .....	3	---	Yuba
880	Thomas McKenna .....	June 12, 1884 .....	25	---	San Francisco
937	John Connors .....	September 26, 1884 .....	3	---	Butte
983	John O'Brien .....	December 20, 1884 .....	5	---	Solano
984	Robert H. Duke .....	December 20, 1884 .....	5	---	Solano
993	Ah Sing .....	January 3, 1885 .....	5	---	Yuba
1009	John Whitfield .....	January 20, 1885 .....	40	---	San Francisco
1037	Lorenzo Latora .....	February 25, 1885 .....	25	---	San Francisco
1057	George Campbell .....	March 17, 1885 .....	4	---	Sacramento
1058	Joe Wood .....	March 17, 1885 .....	4	---	Sacramento
1069	Alice Costello .....	March 31, 1885 .....	5	---	Sacramento
1070	William Howard .....	April 1, 1885 .....	Life	---	San Francisco
1084	John Riley .....	April 21, 1885 .....	15	---	San Francisco
1136	Richard Kelly (1 prior) .....	July 23, 1885 .....	14	---	San Francisco
1155	Clarence Gay .....	September 8, 1885 .....	3	---	Sacramento
1218	William Page .....	December 17, 1885 .....	20	---	San Francisco
1237	Henry Jaggi .....	January 7, 1886 .....	7	---	Santa Clara
1280	Frank Moran .....	March 6, 1886 .....	11	---	San Joaquin
1281	William Jones .....	March 6, 1886 .....	10	---	San Joaquin
1282	Charles Norton .....	March 6, 1886 .....	10	---	San Joaquin
1293	T. J. Smith .....	March 23, 1886 .....	10	---	San Mateo

## SEC. 99. JURY FIXING MAXIMUM OF PUNISHMENT.

In our experience as Prison Directors, the fact has sometimes very forcibly been made to appear that jurors, if their own statements are to be believed, have been induced to consent to a verdict of guilty, in the belief that the culprit would receive a light sentence, or that, under the law, his sentence could not exceed the period which they thought to be the maximum. Logically, the jury should perhaps have nothing to do with fixing the sentence. They find the facts, and the Court pronounces the sentence, which, theoretically, is supposed to be the measure meted out by law proportionately for the guilt of the prisoner. But, practically, the jury are swayed in their deliberations by the punishment that will follow conviction. In this State the plan has been tried of allowing the jury to say whether death or imprisonment for life shall be the punishment of the one convicted of murder.

We do not think that the jury should be given the unlimited power to fix the sentence. But we do believe that the jury should have the power to say that the sentence should not exceed a certain maximum, to be fixed by them. When juries recommend a prisoner to the mercy of the Court, the Courts almost universally take this fact into consideration in pronouncing sentence, and mitigate the term of imprisonment accordingly. It is only a step farther to allow the jury to say what they mean by recommending a prisoner to the mercy of the Court. Hence we believe that the jury should have the privilege of saying that the sentence should not exceed a maximum to be fixed by them. This is not obligatory on them at all, and it may be that, in the majority of cases, they would not care to avail themselves of the privilege. If they do not do so, the power of the Court would remain unabated.

But when the jury had determined the maximum in a case, the Court could not pronounce a sentence exceeding this, but might pronounce one for any less time. We have prepared an amendment to the Penal Code of this State to carry this suggestion into effect, and respectfully urge its passage.

## CHAPTER VI.

## THE PAROLE SYSTEM.

- SEC. 100. Paroling prisoners.
- SEC. 101. Treatment of criminals.
- SEC. 102. Parole system in Ohio.
- SEC. 103. Habitual criminals.
- SEC. 104. Rules and regulations of Board of Managers of Ohio Penitentiary.
- SEC. 105. Correspondence—Views of Warden Peetrey.
- SEC. 106. Views of Mr. Porter.
- SEC. 107. Views of Mr. Wines.
- SEC. 108. Views of Mr. Neff.
- SEC. 109. Views of Mr. Byers.
- SEC. 110. Views of Mr. Andrews.
- SEC. 111. Views of Mr. Crossley.
- SEC. 112. Views and recommendations of Commission.
- SEC. 113. Those who are not criminals by nature.
- SEC. 114. Certificate of character.
- SEC. 115. Inequalities of sentence.
- SEC. 116. Applications for pardon.
- SEC. 117. Allowance of credits.

## SEC. 100. PAROLING PRISONERS.

What has been said in the preceding pages shows the necessity for some action toward discriminating between those who are criminals by nature and those who, not bad at heart, have committed crime. It has been sought to attain this end by means of the indeterminate sentence. We have fully considered this, and while finding much to commend, yet on the whole deem it unsuited to our condition. We believe the same results can better be attained by what is known as the "parole system." By this system the inequality of sentences which confessedly exist, can be corrected without weakening the respect that all should have for the sentences of the Courts, and at the same time, those deserving of it may be enabled to pursue an honest life under the watchful eye of the prison officers.

In the present century a great change, if not reform, has been made in prison management. No longer is the unfortunate who has committed a crime consigned to a dungeon and made to endure a life of torture. Humanity now revolts at the barbarities practiced at the time John Howard commenced his labors for the prevention of cruelty, the improvement of prison structures, and the amelioration of the condition of the convict. But, as in all reactions from unwarranted severity, there is danger also in this, that the opposite extreme of laxity and undue sympathy may be reached. Systems of prison management may be, and have been, proposed, which in theory are perfect, and which, if men were machines, might be successfully carried out.

## SEC. 101. TREATMENT OF CRIMINALS.

Those who have given attention to the treatment of criminals have often differed as to the best course to be pursued from the distinction between the results, which in their judgment it is the object of a prison system to attain. Looking at the interests of society in the aggregate solely, we may say that one course is commendable, while if we regard the duty that society owes to the individual criminal as a man, and the benefit it may itself derive from making him a good and law-obeying man, we may declare that such a course will fail to produce any permanent moral improvement in the prisoner, but will leave him a more confirmed and trained criminal than he was before. Criminals are punished, it is true, for the advantage and protection of organized society. But we have now reached a period when it is almost universally conceded by those connected with the prison management, or who have carefully studied it, that a greater good is effected by causing a moral regeneration in the prisoner than can be obtained or expected from the infliction upon him of any amount of vindictive punishment. Abandoning the idea, then, that a prison is nothing more than a place for the detention and punishment of offenders, and accepting the more reasonable as well as humane view that the great majority of those who have found their way into a prison, may at their release, by proper management and discipline, be sent into the world useful and law-abiding citizens, the question arises how can reformation be effected?

## SEC. 102. PAROLE SYSTEM IN OHIO.

This leads to a consideration of a system which we heartily commend. It is known as the "parole system," and is now in operation in Ohio. One section of the law in force in that State provides that the Board of Managers of the penitentiary shall have power "to establish rules and regulations under which any prisoner who is now, or may hereafter be, imprisoned under a sentence other than for murder in the first or second degree, who may have served the minimum time provided by law for the crime for which he was convicted, and who has not previously been convicted of a felony, and served a term in a penal institution, may be allowed to go upon parole outside of the buildings and inclosures, but to remain, while on parole, in the legal custody and under the control of the Board, and subject at any time to be taken back within the inclosure of said institution; and full power to enforce such rules and regulations, and to retake and imprison any convict upon parole, is hereby conferred upon said Board, whose written order, certified by its Secretary, shall be a sufficient warrant for all officers named therein to authorize such officer to return to actual custody any conditionally released or paroled prisoner; and it is hereby made the duty of all officers to execute said order the same as ordinary criminal process."

## SEC. 103. HABITUAL CRIMINALS.

Another section of the law in force in Ohio, provides that "every person who, after having been twice convicted and imprisoned in some penal institution for felony, whether committed heretofore or hereafter, and whether committed in this State or elsewhere within the limits of the United States of America, shall be convicted, and sentenced and imprisoned in the Ohio Penitentiary for felony hereafter committed, shall be deemed and taken to be an habitual criminal, and on the expiration of the

term for which he shall be so sentenced, he shall not be discharged from imprisonment in the penitentiary, but shall be detained therein for and during his natural life, unless pardoned by the Governor, and the liability to be so detained shall be and constitute a part of every sentence in the penitentiary." Power, however, is given to the Board of Managers to allow the prisoner, after the expiration of the term for which he was sentenced, to go upon parole outside of the buildings and inclosures, remaining in the legal custody of the guard and subject at any time to be taken back within the inclosure of the prison. This is putting into practical execution the principle that society has a right to protect itself against all who make determined war upon it.

In Ohio, the provisions of the parole law were attacked as being unconstitutional, on the grounds (1) that it was an infringement of the exclusive right of the Executive to grant reprieves, commutations, and pardons, and (2) that it was an infringement of the judicial power vested exclusively in the Courts. But the Court held that a parole is not a pardon, and that, as the Legislature has the right to fix the penalty in the first instance, it has also a right to mitigate it. As to its retroactive operation, the Court held that this was no objection to it, because it was not *ex post facto*. Objection to it could come from no one but the prisoner. Some difficulty has been encountered in Ohio in carrying this principle into execution, from the importunities of friends of prisoners. But the underlying principle of this plan is that a parole must be *earned* by merit. To carry out this system practically, and to secure all the benefits which may result from it, the coöperation of the police department of the whole State is required.

#### SEC. 104. RULES AND REGULATIONS OF BOARD OF MANAGERS OF OHIO PENITENTIARY.

The Board of Managers of the Ohio Penitentiary, in pursuance of the power conferred upon them, have adopted certain rules and regulations. The practical operation of this system can best be shown by giving the rules and method of procedure. The rules adopted by the Board in Ohio are as follows:

##### OHIO PENITENTIARY—RULES FOR PAROLING PRISONERS.

*Resolved*, That in the matter of paroling prisoners, under Section 1 of the Act passed by the General Assembly of the State of Ohio, May 4, 1885, the Board of Managers shall be governed by the following rules and regulations:

*First*—No prisoner shall be paroled who has not been in the first grade, continuously, for a period of at least four months.

*Second*—No prisoner shall be released on parole until satisfactory evidence is furnished the Board of Managers, in writing, that employment has been secured for such prisoner, from some responsible person, certified to be such by the Auditor of the county where such person resides.

*Third*—No prisoner shall be paroled until the Managers are satisfied that he will conform to the rules and regulations of his parole.

*Fourth*—Every paroled prisoner shall be liable to be retaken and again confined within the inclosure of said institution for any reason that shall be satisfactory to the Board of Managers, and at their sole discretion, and shall remain therein until released by law.

*Fifth*—It shall require the affirmative vote of at least four of the Managers to grant parole.

*Sixth*—The parole provided for in said Act shall be in the following form, signed by the President and Secretary of the Board of Managers:

*Managers*.—George S. Peters, Columbus, President; W. L. Robinson, Cincinnati; D. R. Fee, New Richmond; F. F. Rempel, Logan; D. C. Coolman, Ravenna; Eugene Powell, Columbus, Secretary.

The Act of 1885, passed May 4, Section 8, is as follows, viz.:

Section 8. That said Board of Managers shall have power to establish rules and regulations under which any prisoner who is now, or hereafter may be, imprisoned under a sentence other than for murder in the first or second degree, who may have served the

minimum term provided by law for the crime for which he was convicted, and who has not previously been convicted of a felony, and served a term in a penal institution, may be allowed to go upon parole, outside of the buildings and inclosures, but to remain, while on parole, in the legal custody and under the control of the Board, and subject, at any time, to be taken back within the inclosure of said institution; and full power to enforce such rules and regulations, and to retake and reimprison any convict so upon parole is hereby conferred upon said Board, whose written order, certified by its Secretary, shall be a sufficient warrant for all officers named therein to authorize such officer to return to actual custody any conditionally released or paroled prisoner, and it is hereby made the duty of all officers to execute said order the same as ordinary criminal process.

OHIO PENITENTIARY AT COLUMBUS, OHIO.

##### Parole of Prisoner.

Know all men by these presents, that the Board of Managers of the Ohio Penitentiary, desiring to test the ability of —, a prisoner of said institution, to refrain from crime, and lead an honorable life, do, by virtue of the authority conferred upon them by law, hereby parole the said —, and allow him to go on parole outside the buildings and inclosure of said institution, but not outside the State of Ohio; subject, however, to the following rules and regulations:

1. He shall proceed at once to the place of employment provided for him, viz.: —, and there remain, if practicable, for a period of at least six months from this date.

2. In case he finds it desirable to change his employment or residence, he shall first obtain the written consent of the Secretary of said Board of Managers.

3. He shall, on the first day of each month, until his final release, according to law, forward by mail to the Secretary of said Board, a report of himself, stating whether he has been constantly under pay during the last month; and, if not, why not; and how much he has earned; and how much he has expended; together with a general statement of his surroundings and prospects.

4. He shall, in all respects, conduct himself honestly, avoid evil associations, obey the law, and abstain from the use of intoxicating liquors as a beverage.

5. As soon as possible after reaching his destination, he shall report to —, show him this parole, and at once enter upon the employment provided for him.

6. He shall, while on parole, remain in the legal custody and under the control of said Board.

7. He shall be liable to be retaken, and again confined within the inclosure of said institution for any reason that shall be satisfactory to the Board of Managers, and at their sole discretion.

The management of said institution has a lively and friendly interest in the subject of this parole, and he need not fear or hesitate to freely communicate with the Secretary, in case he loses his situation, or becomes unable to labor by reason of sickness, or otherwise.

##### Description.

Name, —; age, —; height, —; weight, —; complexion, —; eyes, —; hair, —; marks, —; crime, —; date of sentence, —; date when admitted, —; date of parole, —; county, —; Court, —; occupation, —; residence, —.

The Board of Managers:

By —, President.

—, Secretary.

*Seventh*—No alteration or amendment shall be made to these rules and regulations, unless at least four of the Managers vote therefor.

The Board satisfy themselves that the offense for which the prisoner has been convicted is his first offense, and that he will secure proper employment, by requiring certificates from the Prosecuting Attorney and the person intending to give him employment in the following form:

OHIO PENITENTIARY, SECRETARY'S OFFICE, —, O., — 188—.

To the Managers of the Ohio Penitentiary:

GENTLEMEN: I certify that —, a prisoner in the Ohio Penitentiary, from — County, convicted at the — term of — Court, 18—, for the crime of —, and sentenced for — years, and now an applicant for parole, has not, to my knowledge, been convicted of a penal offense prior to the crime for which he is now sentenced, and I have no knowledge of any other indictment or other serious charge pending that would render the parole of said — unsafe or injudicious.

Yours very respectfully,

Prosecuting Attorney, — County, Ohio.

OHIO PENITENTIARY, SECRETARY'S OFFICE, —, O., —, 188—.

*To the Board of Managers Ohio Penitentiary:*

GENTLEMEN: — beg to state that in the event —, No. —, a prisoner in your institution, is deemed by you a suitable person to parole under the provisions of the late law, providing for such release, that — will immediately upon the release of the said —, employ him at work in the art of —, which is considered a useful and honorable occupation, and so far as may be in — power to do — will aid and encourage the said — to comply with the conditions of his parole, and to become a useful and honorable member of society.

My Post Office address is —, County of —, Ohio.

COUNTY OF —, OHIO.

I certify that the above named — is a responsible, reliable citizen of — County, Ohio, and — entitled to respect and consideration.

—, Auditor, — County, Ohio.

If the Board conclude to parole the prisoner, he is given a paper in the form prescribed in the rules. That is as follows:

*Managers.*—Geo. S. Peters, Columbus, President; W. L. Robinson, Cincinnati; D. E. Fee, New Richmond; F. F. Rempel, Logan; D. C. Coolman, Ravenna; Eugene Powell, Columbus, Secretary.

The Act of 1885, passed May 4, Section 8, is as follows, viz.:

Section 8. That said Board of Managers shall have power to establish rules and regulations under which any prisoner who is now, or hereafter may be, imprisoned under a sentence other than for murder in the first or second degree, who may have served the minimum term provided by law for the crime for which he was convicted, and who has not previously been convicted of a felony, and served a term in a penal institution, may be allowed to go upon parole outside of the buildings and inclosures, but to remain, while on parole, in the legal custody and under the control of the Board, and subject at any time to be taken back within the inclosure of said institution; and full power to enforce such rules and regulations, and to retake and reimprison any convict so upon parole, is hereby conferred upon said Board, whose written order, certified by its Secretary, shall be a sufficient warrant for all officers named therein, to authorize such officer to return to actual custody any conditionally released or paroled prisoner, and it is hereby made the duty of all officers to execute said order the same as ordinary criminal process.

OHIO PENITENTIARY AT COLUMBUS, OHIO.

*Parole of Prisoner.*

Know all men by these presents, that the Board of Managers of the Ohio Penitentiary, desiring to test the ability of —, a prisoner of said institution, to refrain from crime and lead an honorable life, do by virtue of the authority conferred upon them by law, hereby parole the said — and allow him to go on parole outside the buildings and inclosure of said institution, but not outside of the State of Ohio, subject, however, to the following rules and regulations:

1. He shall proceed at once to the place of employment provided for him, viz.: —, and there remain, if practicable, for a period of at least six months from this date.

2. In case he finds it desirable to change his employment or residence, he shall first obtain the written consent of the Secretary of said Board of Managers.

3. He shall on the first day of each month until his final release, according to law, forward by mail to the Secretary of said Board a report of himself, stating whether he has been constantly under pay during the last month; and if not, why not; and how much he has earned, and how much he has expended, together with a general statement of his surroundings and prospects.

4. He shall in all respects conduct himself honestly, avoid evil associations, obey the law, and abstain from the use of intoxicating liquors as a beverage.

5. As soon as possible after reaching his destination, he shall report to —, show him this parole, and at once enter upon the employment provided for him.

6. He shall, while on parole, remain in the legal custody and under the control of said Board.

7. He shall be liable to be retaken and again confined within the inclosure of said institution for any reason that shall be satisfactory to the Board of Managers, and at their sole discretion.

The management of said institution has a lively and friendly interest in the subject of this parole, and he need not fear or hesitate to freely communicate with the Secretary in case he loses his situation, or becomes unable to labor by reason of sickness or otherwise.

*Description.*

Name, —; age, —; height, —; weight, —; complexion, —; eyes, —; hair, —; marks, —; crime, —; date of sentence, —; date when admitted, —; date of parole, —; county, —; Court, —; occupation, —; residence, —.

The Board of Managers:

By —, President.

—, Secretary.

I hereby accept the conditions of the within parole.

No. —.

—, 1886.

The prisoner is required to make his report to the Secretary, and if he desires to change his employer, notifies the Secretary of this fact. These papers, as used in Ohio, are in the following form:

Parole No. 17.

—, O., —, 188—.

EUGENE POWELL, Esq., *Secretary Board of Managers of the Ohio Penitentiary:*

SIR: In compliance with the conditions of the parole granted me, I herewith report that I have been under employment during the last month as follows: With Mr. —, at — per day. No. of days under pay —. No. of days idle —. I was unemployed for the following reasons: —. Balance on hand of last report's earnings —. Earned last month —. Total —. Expenditures last month —. Balance on hand —. For the following reasons I have changed employment —. My present employer is Mr. — of —.

Yours very respectfully,

I believe the above statement to be correct. —.

OHIO PENITENTIARY—MANAGER'S OFFICE.

*Paroled Prisoner's Request for a Change of Employment.*

—, O., —, 188—.

MR. EUGENE POWELL, *Secretary Board of Managers, O. P.:*

SIR: For the following reasons — I desire to change my employment from Mr. —, of —, to Mr. —, of —, who has agreed to give me employment, and will certify hereafter to the correctness of my monthly reports. I believe that this proposed change will be to my advantage.

Yours respectfully,

OHIO PENITENTIARY—MANAGER'S OFFICE.

COLUMBUS, O., —, 188—.

DEAR SIR: Yours of the — instant is at hand, requesting a permit for a change of employment from Mr. —, of —, to Mr. —, of —. Believing from your statement that such a change will be to your advantage, I consent that such a change take place. Please see that your employer certifies to the correctness of your monthly returns. These returns should be made with the utmost care and promptness, as from your observance of these points we judge to quite an extent as to your desire to comply with the conditions of your parole. The condition of these reports indicates something as to your habits, etc. Please be prompt, careful, and accurate in their preparation.

Yours very respectfully,

—, Secretary.

Then having earned his release he is given the following final release:

OHIO PENITENTIARY—PAROLED MAN'S FINAL RELEASE.

To —:

At the — meeting of the Managers, your absolute release was authorized to take effect —. Having earned your parole by good performance while here, and having since shown your ability to maintain yourself and your character in ordinary society, there is no reason to prevent your becoming a well-to-do, respected, and useful citizen. Your absolute release is ordered in the expectation that such will be your success.

By the Managers.

—, Managers.  
—, Warden.

Columbus, Ohio, —, 188—.

If he has violated his parole in any particular, and it is desired to arrest him and place him once again within prison walls, an order is issued for his arrest in this form:

The Act of 1885, passed May 3, Section 8, is as follows, viz:

SECTION 8. That said Board of Managers shall have power to establish rules and regulations under which any prisoner who is now, or hereafter may be, imprisoned under a sentence other than for murder in the first or second degree, who may have served the minimum term provided by law for the crime for which he was convicted, and who has not previously been convicted of a felony, and served a term in a penal institution, may be allowed to go upon parole outside of the buildings and inclosures, but to remain, while on parole, in the legal custody and under the control of the Board, and subject at any time to be taken back within the inclosure of said institution; and full power to enforce such rules and regulations, and to retake and reimprison any convict so upon parole, is hereby conferred upon said Board, whose written order, certified by its Secretary, shall be a sufficient warrant for all officers named therein, to authorize such officer to return to actual custody any conditionally released or paroled prisoner; and it is hereby made the duty of all officers to execute said order the same as ordinary criminal process.

OHIO PENITENTIARY—MANAGERS' OFFICE.

COLUMBUS, O., —, 188—.

*Managers' Order for Arrest of Paroled Prisoners.*

To —, an Officer of the Ohio Penitentiary, and to any Sheriff, Constable, or Police Officer:

It appearing to the undersigned, the Board of Managers of the Ohio Penitentiary, that — No. —, an inmate of said penitentiary, conditionally paroled on the —, 188—, and in the legal custody of said Managers outside the penitentiary inclosure, has violated the conditions of his parole, it is hereby ordered that the said — be retaken and returned forthwith to our actual custody within the penitentiary inclosure. And we hereby require you to so retake and return him. And for so doing this shall be your sufficient warrant.

Given under our hands this —, 188—.

— President.

A true copy from the record of orders made in regard to paroled prisoners.

— Secretary.

#### SEC. 105. CORRESPONDENCE. VIEWS OF WARDEN PEETREY.

Our Secretary has been in correspondence with several people in the East concerning this system, and all speak in favor of it.

Isaac G. Peetrey, Warden of the Ohio Penitentiary, in a letter to the Secretary, dated May 15, 1886, says:

Yours regarding parole law received. We have now been practically under parole law for one year; results all that the most sanguine could anticipate. I am of the opinion the power should be vested in the Board of Managers, and that rules governing applications should require a statement from the Judge, prosecutor, and a few honorable, respectable citizens in addition, as to former character and family relations. I see that in almost every instance where *paid attorneys* have been allowed to present the claims of applicants, we have most fears of successful results. My views would be a statement as above, and then the prison record to determine the recommendation of the Warden. We find *non residents* of the State have given us trouble who have been paroled. Those having homes, family ties, are invariably doing well, and especially where the wife has been true and steadfast in her family relations.

Some embarrassment as to eligibility under our law as to second term prisoners. Attorney-General holds that indictments on two counts, two sentences for different terms, one beginning at the expiration of the other received at same term of Court, are first term prisoners. I find that the law requires that the prisoner shall serve the minimum of the sentence; we hold they must complete first term, and then serve minimum of second before eligible to parole. The law ought to specify such cases, and if *desirable* to parole such prisoners specially mention as to what is the minimum of sentence, in the event of two sentences given at same time.

Above all things after the statement of responsible parties known to be such, let prison record recommend and not paid attorneys.

#### SEC. 106. VIEWS OF MR. PORTER.

William O. Porter, of Hayesville, Ohio, in a letter to the Commission, dated April 7, 1886, says:

We are now trying a system of paroling convicts out of the penitentiary, which I think is likely to have a beneficial influence in the way of reformation. It puts the prisoner in a position where, by his good conduct, he not only gains his release from prison, but also starts on the road to honor and reputation as a citizen.

#### SEC. 107. VIEWS OF MR. WINES.

Fred. H. Wines, in a letter to the Commission, dated April 12, 1886, says:

The parole system has shown itself to be practicable at Elmira, New York. It implies the existence of a truly reformatory discipline in prison. Where this is lacking I should doubt its practicability.

#### SEC. 108. VIEWS OF MR. NEFF.

William Howard Neff, President of the Thirteenth National Conference of Charities and Corrections, in a letter to the Commission, dated April 21, 1886, says:

The prison legislation of Ohio is largely tentative and experimental; that being the only way that many important questions can be settled. Our experience thus far with the parole system is encouraging, and, I may say, satisfactory. Some improvements, suggested by experience, will undoubtedly be made. It is the only system yet devised likely to reform the criminal. We notice one or two points which you can avoid: Paroles ought not to be solicited by prisoners or their friends; smart lawyers should understand that paroles are not to be given, as unfortunately pardons sometimes are, to persistent importunity or influence. They are to be *earned* by the good conduct of the prisoner, by what the Warden, and Chaplain, and Penitentiary Directors can ascertain about his character, prospects, and probability of reformation. This is especially important, as sometimes the worst criminals, for their own purposes, are the best prisoners. Properly carried out, the parole system will be a great relief to the Governor, as he wisely will limit his consideration of cases for pardon to new testimony, innocence of prisoner, a serious doubt as to guilt, with perhaps an eye to inequality of sentence; but this last great source of injustice, when sixty or seventy Judges of different temperaments sentence prisoners, with great discretion given by the statute, will be almost entirely remedied by the parole system.

The parole system is not really complete without another provision, which may seem very severe, but is very important. We make in Ohio a great distinction between first offenders and confirmed criminals. After a criminal has been *twice* sent to the penitentiary, on the *third conviction*, the sentence is for life, unless mitigated by the Board of Prison Directors. He is liable to and will probably serve out a life sentence. He is a confirmed criminal, and society has a right to demand his seclusion. There will probably be no backward step taken in our reformatory work. The parole system will undoubtedly stand, but it will be guarded and explained more fully, as above indicated.

J. A. Reed, Warden of the State Prison of Minnesota, in a letter to the Commission dated May 7, 1886, says:

I think well of the parole system.

#### SEC. 109. VIEWS OF MR. BYERS.

In answer to a letter addressed to Gov. J. B. Foraker of Ohio, A. G. Byers, Secretary of the Board of State Charities of Ohio, in a letter dated April 26, 1886, says:

I. Some objections were raised as to the constitutionality of the law, but our Supreme Court has decided the law to be constitutional.

II. Some objections have been raised against the law growing out of a misinterpretation of its spirit and mistakes in its administration, the latter chiefly in hearing counsel and giving consideration to petitions and other outside influences by the Board of Managers, whereas, the law contemplates the prisoner himself while in custody and under the eye of the law, his conduct in labor, study, and general deportment.

These mistakes wrought sadly upon the quiet, and I think, the general order of the penitentiary, to the prejudice of the law in many communities.



You will readily appreciate the effect of sending back to a community an incorrigible, mean criminal, without notice or any opportunity for remonstrance. You will just as readily see how demoralizing to prisoners, when they discover that outside influences are not only taken into consideration, but are more potent than the best record the prisoner can make for himself. Mistakes aside, for which the law is not responsible; the system of parole—as provided for in the law of our State—is wise and practically useful. First, in promoting good conduct in the prisoner, aiding materially as reformatory prison discipline, and in securing the rehabilitation of the discharged convict. Secondly, it largely relieves the Governor from the consideration of pardon papers, and of the greatest annoyances connected with the executive office.

But we have learned something from our mistakes. These will not be repeated. Good results are already apparent, and on the whole we are quite favorably impressed with the law.

#### SEC. 110. VIEWS OF MR. ANDREWS.

John W. Andrews of Columbus, Ohio, in a letter to the Commission dated April 24, 1886, says:

We have hardly had time in this State to enable us to judge of the workings of the parole system, so far as the prisoners are concerned. Our Board of State Charities were all in favor of its adoption, and if it can be properly carried out, we look for valuable results from it upon the discipline of the prison and as a reformatory influence upon the younger prisoners generally. Under our law of 1884 the prisoner can *earn*, in the cases specified, by his good conduct as shown by the record, subject, of course, to the sound judgment of the Directors in each case, the privilege of being sent out on parole. The only serious difficulty thus far encountered is that outside influence is brought to bear upon the Directors; petitions are gotten up, partisan and family influence invoked, etc., but we do not anticipate permanent trouble from this source, as the Legislature will probably provide that in each case the grounds of a parole shall be submitted to the Governor and approved by him. It is vital to the parole system that it shall never be extended to a prisoner except as a reward for long continued good conduct, as shown by the record, and if it is not thus administered, it will do more harm than good. It involves a good deal of labor to keep a daily record of conduct in a large prison, and officers cannot readily become thoroughly acquainted with each individual among fifteen hundred or more prisoners, and the parole system in such a prison labors under many disadvantages; but when our intermediate prison is completed, and we come to deal with a moderate number of young men, or men found guilty of a first offense, we shall look for large and beneficial results from it.

#### SEC. 111. VIEWS OF MR. CROSSLEY.

While this system seems to meet with such favor, yet there has been expressed some little objection to it. G. W. Crossley, Warden of the Iowa Penitentiary, in a letter to the Commission, dated April 19, 1886, in answer to the question, "Is the parole system good and practicable in this country?" says:

I think not. If it is not deemed safe to liberate a prisoner, unconditionally, he should not be liberated until the expiration of his sentence, either upon parole or pardon. A confirmed and hardened criminal will not regard the conditions as binding in either case, and the result of the adoption of the parole system would, in my judgment, be to secure the discharge of prisoners, who, while they had no intention of reforming, would still be intelligent and shrewd enough to conform strictly to the rules prescribed, in order to secure a parole. Many of the worst criminals, in all prisons, obey all the rules and regulations, and their conduct as prisoners is perfect, and thus they secure the full benefit of good time laws, such as exist in Iowa, Illinois, and other States. Under the parole system, such men would often get released, while less hardened but really more deserving prisoners would remain their full time. It would be just as consistent for the Judge to suspend sentence during good behavior, after the prisoner has been tried and convicted, and I think more so. The Board of Managers of the Ohio Penitentiary seem to have great confidence in the success of the parole system, as adopted in that State, but the short time that has elapsed since the law went into effect, and the shorter time it has been on trial, has not yet demonstrated its success or failure. If it shall prove a success in Ohio, it will be time enough for other States to adopt it. If, after a fair trial, the objections I have urged should prove, by the exercise of wise discretion on the part of those intrusted with the power to grant paroles, to be not well founded, I shall be very glad to admit that I was mistaken, and to urge the adoption of the law in Iowa.

#### SEC. 112. VIEWS AND RECOMMENDATIONS OF COMMISSION.

A large portion of those who have been convicted of crime are criminals by nature and education. They are not driven to crime by want, nor are they the victims of sudden and ungovernable passions. They earn their living by crime, as the honest portion of the community do by toil. Many causes have led them to adopt this course which we will not stop to consider here.

Society has a right to protect itself. It takes the maniac and places him in a safe and well guarded structure during the rest of his life or until the light of reason is restored. It hangs him who has committed murder, and formerly many crimes were followed by capital punishment. The man who preys on society in pursuance of a deep seated design to do so, is a dangerous foe to it. When it is once ascertained that he does not intend to become a law-abiding member of the State, but intends to pillage and maim, society should restrain him, so that he will be rendered harmless. The habitual and incorrigible criminal should be deprived of freedom during the rest of his natural life.

How shall his criminal qualities and aversion to honest life be ascertained? It is a delicate task for any man or for any tribunal to exercise the power of declaring that one man committing an offense is an habitual and incorrigible criminal who would never reform, and of saying that another guilty of the same offense, might, after he had served the punishment due to his guilt, lead thereafter a blameless life. Still this power ought to be lodged somewhere.

#### SEC. 113. THOSE WHO ARE NOT CRIMINALS BY NATURE.

There is a large class, at least in California, who are not criminals by nature, but who are too weak to resist temptation when exposed to it. Owing to conditions, the causes of which it might be difficult, perhaps useless, to fathom, many young men grow up in this State without a trade or habits of labor and industry. They mingle with vicious companions, and in some evil hour a crime is planned and executed. Arrested and hurried to prison, many of them are lodged in the State Prison before their parents or friends are aware of their arrest.

We all know that many a good parent has a wayward son; not bad, nor vicious, but through the influence of evil companions he commits a crime. He must be punished, certainly. But it is doing him little good, and doing society little good, to put him in company with hardened criminals, by whom he is taught that the greatest criminal is the greatest hero. If he serves out his full time, he has paid the debt he owes to society and considers himself under no obligations to it. How evident must it be that if some encouragement were given to him—if he was made to feel that not everybody was against him—all the best qualities of his nature would be brought out. Under the present system, he must be kept for his full time or pardoned or his sentence commuted. How much better would it be, after having caused him to serve, let us say, one year, to parole him on conditions that would insure his leading an honest and industrious life? By doing so, full power would exist to enforce the conditions imposed. For a violation of any of them, he would be liable to be taken back and placed in prison again. It would be some guaranty to society that he was not a dangerous man. The man who has served a sentence becomes a convict. The world has put its mark upon him, and knows

him only to shun and despise him. Denied the opportunity to honestly earn his bread, he is forced to steal it.

#### SEC. 114. CERTIFICATE OF CHARACTER.

The granting of a parole would in a measure wipe away this disgrace. It would be a certificate of good character. It would show that he had been diligent and faithful in prison, and in the judgment of the prison managers was fit to become a member of society, while he himself would have the most powerful incentive to do all that was required, in order that he might continue to retain his parole.

If it is possible for a man to reform at all, it is under a system like this. He is always watched, not with a desire to harass him, but for his own benefit. It will be conceded by all that reformation is one of the principal objects of punishment. Perhaps, it should be the only one. There is no other method, of which we have any knowledge, that is so sure to cause permanent reformation as this. While he is out on parole, he must of necessity be a good man. He must show by monthly reports how much he has earned, how much he has spent, how many days he has worked, how many he has been idle. If he continues honest and industrious during the existence of his parole, he undoubtedly will continue so afterwards.

#### SEC. 115. INEQUALITIES OF SENTENCE.

As we have shown there are great variances in the sentences pronounced by different Judges for the same offense. There is nothing that produces so much discontent and disaffection among prisoners as this inequality of sentences. If one man has received a sentence of ten or twelve years for an offense for which another has received a sentence of but one year, the former feels that he has suffered a grievous wrong, and when he leaves the prison does it with feelings of resentment and an ardent desire "to get even." How much better to have him feel that he should have no grudge against society. The parole system enables these great and often unjust inequalities of sentence to be corrected.

#### SEC. 116. APPLICATIONS FOR PARDON.

From our experience as Prison Directors, we know something of the importunities of those who desire pardons or commutations of sentence. We know that many who are the most persistent are the least deserving, and it may possibly be that many who ought to receive executive clemency, either through modesty or lack of friends, fail to make known their claims. Yet the cases of all, when presented, must be patiently and carefully examined. There are many in prison who might be liberated without danger to society. The public can know but little of the cases that come before a Governor or a Board of Pardons. When cases come in which the Judge who sentenced, the District Attorney who prosecuted, the jurors who tried, and all who are interested, unite in saying that a mistake was made, and that a gross injustice was done by the conviction, and in earnestly asking for a release of the prisoner, it seems hard to say that a man should be confined for a long number of years in the face of such a showing. The adoption of the parole system would relieve those now charged with the duty of hearing applications for pardons from much of their arduous and unpleasant duties. By adopting the suggestions contained in the letters of the gentleman in Ohio, and by making merit alone

the test, it certainly seems to us that it is for the best interest of the State to adopt this system.

#### SEC. 117. ALLOWANCE OF CREDITS.

There has been some misunderstanding as to the manner in which the credits now allowed by law are to be computed. We have endeavored to clear this up by preparing a table to be incorporated into the statute, showing the mode by which they should be reckoned, and deem this section the most appropriate for inserting the provisions authorizing the parole of prisoners.

Accordingly, we submit the draft of an Act to remove some of the uncertainties in the language of this section, and conferring authority upon the Board of Prison Directors to establish rules and regulations for the parole of prisoners. This will be found in the chapter on "Proposed Legislation."

## CHAPTER VII.

## AID TO DISCHARGED PRISONERS.

- SEC. 118. Importance of subject.
- SEC. 119. Views of Mr. Wines.
- SEC. 120. Views of Governor Pierce.
- SEC. 121. Views of Mr. Garrett.
- SEC. 122. Views of Governor Pattison.
- SEC. 123. Views of Mr. Chapin.
- SEC. 124. The Massachusetts system. Views of the agents.
- SEC. 125. Massachusetts law for discharged prisoners from county jails.
- SEC. 126. Views of Mr. Cable.
- SEC. 127. Views of Mr. Greene.
- SEC. 128. Views of Mr. Buckner.
- SEC. 129. Views of Mr. Coffin.
- SEC. 130. Views of Mr. Brockway.
- SEC. 131. Views of Warden Carter.
- SEC. 132. Views of Warden Brush.
- SEC. 133. Views of Mr. Highton.
- SEC. 134. Views of General Brinkerhoff on this subject.
- SEC. 135. Description of the Crofton system.
- SEC. 136. Description of the Gloucester system.
- SEC. 137. Prison associations.
- SEC. 138. Experience of Mr. Taylor, agent for Connecticut Prison Association.
- SEC. 139. Possibility of reformation.
- SEC. 140. Remarks of Warden Watkins.
- SEC. 141. Same subject continued. Proportion that can be reformed.
- SEC. 142. Recommendations of Commission.

## SEC. 118. IMPORTANCE OF SUBJECT.

In California, and generally in the United States, comparatively little attention is paid to the fate of a prisoner who is released from prison. While undergoing sentence he is forced to obey the rules of the prison, and is compelled to perform a certain amount of labor. Perhaps the discipline enforced in prison has a beneficial and reformatory effect upon him. Perhaps not. He is given, in this State, on discharge, a half-fare ticket to the place whence he came, supplied with a suit of cheap clothes, and if he has not sufficient funds, also with \$5 in money.

Turned adrift in the world, with no one to help or guide him, compelled to conceal the fact of his imprisonment or suffer the penalty of scorn, he must be strong in spirit indeed, to face it all and by honest life win back in society the place which he has lost. If he makes an effort to reform, his statements will not be believed. No one desires to employ a convict. If he succeeds in concealing the fact of his conviction, he is liable at any time to meet one who knows of his disgrace, and whose silence is only purchased at the price of hush money.

On the other hand the haunts of sin and vice throw open wide to him their doors. They welcome him. Is it a wonder then, that so many fall back again into crime?

It will be conceded that it is wise and economical, and not alone humane, to aid every man who wishes to lead an honest life. To arrest, convict, and punish a criminal requires money. Yet what shall be done? This is a difficult question, while all will, perhaps, admit that something should be done.

For the purpose of showing the opinions of others on this very important subject, we respectfully call attention to the following:

## SEC. 119. VIEWS OF MR. WINES.

Fred. H. Wines, in a letter to the Commission dated April 12, 1886, says:

The best plan of aid to discharged convicts is by voluntary association of benevolent men and women disconnected with the government. This form of aid has made but slight progress in this country, however, and to encourage it some subsidy from the State Treasury appears to be essential. A fund disbursed directly by State officials does not appear to give the best results. With the indeterminate sentence, a graded prison and conditional liberation, the difficulty of finding employment for discharged prisoners is reduced to a minimum.

## SEC. 120. VIEWS OF GOVERNOR PIERCE.

Hon. Gilbert A. Pierce, Governor of Dakota Territory, in a letter dated April 14, 1886, says:

To your last inquiry as to the State extending aid to discharged convicts, I should say that under certain restrictions, and if exercised with great care and judgment, that this might be done to advantage.

## SEC. 121. VIEWS OF MR. GARRETT.

Hon. Phillip C. Garrett, in a letter dated April 26, 1886, says:

The question what aid should be given to discharged prisoners is a difficult one to answer. That this is one of the most crying needs to prevent recommitments may safely be alleged. In England, they have a system of surveillance for a term of months, by the police, to whom the discharged prisoners must report once a month, and who keep an eye on them. This is said to be a success, yet it is not exactly what is wanted. Mr. Brockway obtains situations for his released prisoners before their discharge, and they remain on parole, under his control, for six months. But this is much easier of accomplishment with his class of inmates than discharged convicts from a penitentiary. Either a voluntary association, such as the Pennsylvania Prisoners' Aid Society, assisted, if necessary, by State appropriation, or a State Agent, whose sole function should be to aid discharged prisoners to secure employment, and avoid a relapse into crime, would be better than any other plan yet devised.

## SEC. 122. VIEWS OF GOVERNOR PATTISON.

Hon. Robert E. Pattison, Governor of Pennsylvania, in a letter dated May 4, 1886, says:

The State should give to each discharged prisoner a sum sufficient to pay his expenses to his home. In this State \$5 is given to each prisoner whose home is fifty miles from the penitentiary at Philadelphia, and \$10 over that distance. Other money would not be judicious if the penitentiary is near a large city.

## SEC. 123. VIEWS OF MR. CHAPIN.

William W. Chapin, Secretary of the Board of State Charities and Correction of Rhode Island, in a letter dated May 10, 1886, says:

The law authorizes the Board to pay to each convict upon his discharge a sum not exceeding one tenth of what he may have earned during his sentence, the sum in no case however, to be less than \$5. The convict must also be decently clothed when discharged. The law also provides that not exceeding one tenth of the earnings of convicts may be paid to their families or near relations, during their sentences, instead of to themselves.

#### SEC. 124. THE MASSACHUSETTS SYSTEM. VIEWS OF THE AGENTS.

Our Secretary addressed letters asking for a detailed account of the operation of the Massachusetts law to Daniel Russell, Boston, agent for discharged male convicts, and to Miss Sarah E. Frye, Boston, agent for discharged female convicts, and in response received replies from which the following extracts are taken. Mr. Russell says:

I will say in reply that I am now in my twenty-first year as agent for discharged convicts, acting both for the State of Massachusetts and also for the Massachusetts Society for Discharged Convicts.

The State appropriates yearly \$3,000 to be expended for the benefit of those discharged from State Prison, and \$1,000 for salary of agent, making \$4,000 in all, expenses of office, traveling of agent, and all other expenses of agent while working for the discharged convict, to be paid out of the \$3,000. The Massachusetts society for aiding discharged convicts is supported by contributions from the public collected by the agent; also an occasional legacy or bequest goes into the treasury of the society. The society pays the agent \$100 per month clear of all expenses. I visit the State Prison the last week of every month (oftener if necessary), and have an interview with each one who is to be discharged the following month, become thoroughly acquainted with him if possible, get his early history as far forth as I can, create a confidence between him and me, with the understanding that the confidence he places in me shall be sacred on my part. By that means the right way to deal with each one when they are discharged will begin to show itself, and oftentimes the poor fellow, who has felt that he was entirely forsaken both by God and man, and had never heard the words spoken before in his ear, "I have come to befriend you," looks with astonishment, and feels like another person, and the little spark of manhood there is in him can be brought out in that way, if it is there. When discharged we aid him to get employment, furnish him with tools if he has a trade, board for a week or two while seeking employ, clothing enough for a change, that he need not have to steal to keep clean and decent while looking for work. If he has a home in other parts of the State, or in other States not too far off, we send him to his family or his friends; whatever will benefit him most to make a man of him, and lead him into an honest way of earning a living, that we strive to do. What we might have to do to-day for a man is no criterion for the man that we may have to deal with to-morrow. I find as many different phases of character and disposition among the prisoners, as I do with men outside of the prison, and have to meet them on that line and act accordingly.

I think there should be but one agent for the State, and that the Keeper of each House of Correction in every county should assist every man when discharged from the House of Correction, to the amount of from five to fifteen dollars, and that the expense should be charged to the county expenses, not in cash, but in clothing, family stores if he has a family, tools if he needs them, or in any way whereby it will benefit him and enable him to be a better man. That should not apply to an habitual tramp, or an habitual thief, or an habitual drunkard and bummer. The law should be so that the Keeper of a House of Correction and the County Commissioners can use their good judgment and some discretion about it, although, sometimes, I have tried the experiment with some of the worst criminals on earth, and by so doing have brought them up out of their degradation so that they have led honest lives.

You need a great deal of faith, an abundance of patience, a large amount of perseverance, and considerable tact in studying and understanding human nature, to be able to deal with that class of men rightly.

And Miss Frye says:

It is not an easy matter to give a summary of my work, its duties are so varied. In answer to your first inquiry I shall most emphatically say that I believe a woman should have charge of female prisoners; if she has tact and the right requisites, she can get at bottom facts in their personal history, and upon this basis, one can determine the best method of helping them. My experience as clerk in the same department was of great assistance to me, as I became somewhat used to the element I had to deal with. My work has been in direct conjunction with the Board, who have given me the largest liberty in conducting it, and have been always ready to be consulted in difficult cases. There are no rules that can guide one, circumstances must be taken into consideration and work correspond to needs, which must necessarily be of great variety.

As to the appropriation, I have never exhausted it, for, in my judgment, it is not well to be lavish with this class, but endeavor to put them in a way to help themselves, fur-

nishing them with such clothing as will make them look respectable, and is needful for domestic service, rarely giving them money, assisting them and finding for them in families laundry work, or that which they are able to do best. If they are ill, helping them to hospital or dispensary treatment, visiting them meanwhile, assuring them that some one is interested in their welfare. Sometimes, if they are not able to work, I pay board for them for a short time. I have a large correspondence, which I consider invaluable; some of them have continued for three years; impossible to visit them, some of them so far away. Send as many of them away from their old haunts and acquaintances, as less liable to temptation. I keep a record of the women I help, of the amount expended, and a daily journal, which is useful for reference.

#### SEC. 125. MASSACHUSETTS LAW FOR DISCHARGED PRISONERS FROM COUNTY JAILS.

In Massachusetts an Act was passed March 22, 1881, for the purpose of providing aid for prisoners discharged from jails and houses of correction. It does not apply to the State Prison, and provides that the keeper of any jail, or the master of any house of correction, with the approval of the County Commissioners, may expend in aiding any prisoner discharged from his custody such sum, not exceeding \$10 in any case, as in his opinion will assist said prisoner in his endeavors to reform. The money so expended may, in the discretion of the keeper or master, be paid to the prisoner, or to such person, to be expended in behalf of the prisoner, as the keeper or master may select, or for furnishing the prisoner with board, clothing, transportation, or tools. The amount so expended by any keeper or master under this law are allowed and paid to him by the Treasurer of the county in which the jail or house of correction is located.

#### SEC. 126. VIEWS OF MR. CABLE.

G. W. Cable, of Northampton, Massachusetts, in a letter to the Commission dated June 29, 1886, says:

They should have at least decent attire, and, if destitute, transportation to some point where the chances are comparatively good for a new start in life. Prisons could have a large correspondence list of benevolent persons willing to have more or less salutary and unobtrusive oversight of discharged convicts.

#### SEC. 127. VIEWS OF MR. GREENE.

Jacob R. Greene, of Hartford, Connecticut, in a letter to the Commission dated June 29, 1886, says:

Supposing that the efforts to assist discharged prisoners must come entirely from private individuals, or associations of charitable persons, and not from the State, the answer to your fourth question is greatly dependent upon the circumstances in each case. I think it is, in any broad discussion of the matter, somewhat tied in with your sixth question. It is a very serious question, what the State, as such, can do, either for discharged prisoners or for those persons who constitute the class from which criminals come, although they may have as yet committed no crime. My personal feeling is that the power of the State is very small in such matters. The State is a purely secular affair, and criminality is a matter of character; and the State has very little to do with that. The instruction which it provides for its future citizens is of an entirely secular character.

#### SEC. 128. VIEWS OF MR. BUCKNER.

R. C. Buckner, Manager of Buckner's Orphans' Home, in a letter dated Dallas, Texas, May 25, 1886, in answer to the question, "Do you believe that the State should engage in this work?" says:

I certainly do. The objects of imprisonment should be but two, and neither should be punishment. The safety and good of society should be one, the reformation of prisoners

the other. As attention and kind treatment to a child, after correcting it, are necessary to retain its confidence and love, and to influence it to do better, so with the treatment upon the part of the State of released prisoners. In Texas, nothing is done in this way except to furnish the released with a certain quantity of clothing, and expense money to his former community.

In answer to the question, "Should the State aid private associations?" he replies:

Only to the amount of the actual cost of postage and stationery, and expense of travel necessary in the work, and that only to organizations non-sectarian and purely charitable, with officials appointed or approved by the State. This answer is purely theoretical, without any personal experience or observation.

In answer to the question, "What has been your experience with discharged prisoners?" he answers:

Not extensive, yet pleasant and encouraging. I have one in mind now, who was imprisoned for murder. He was never abandoned by the hopes and efforts of his friends. His deportment in the penitentiary was excellent, and his sentence commuted. After his release, employment and encouragement were given him in the community from which he was sent. Gradually he arose, and established himself, became noted for industry and good conduct, is now even a useful member of church, and a married man. Had he been denied employment, and been kicked out of society, his utter ruin might have followed, and greater injury to society.

In answer to the question, "Is it difficult to obtain employment for prisoners?" he responds:

The greater difficulty is in getting released persons to settle down from wandering, and accept regular work. In fact, this is true with reference to all classes of very wicked and abandoned persons.

#### SEC. 129. VIEWS OF MR. COFFIN.

Charles F. Coffin, of Chicago, in a letter to the Commission, dated June 28, 1886, says:

Find suitable places for them where they can obtain employment; and as preparatory to this, establish homes where they may be employed until some suitable places are found. An example of such a "home" exists in New York, and, on a smaller scale, here.

#### SEC. 130. VIEWS OF MR. BROCKWAY.

Z. R. Brockway, Superintendent of Elmira Reformatory, of New York, in a letter dated July 7, 1886, forwarded to the Commission by Mr. M. H. Arnot, says:

The best aid to discharged prisoners is that rendered by the prison authorities while holding the prisoner under legal control (on parole), by employment and supervision, with any such pecuniary aid as is necessary to put him into a self-supporting condition.

#### SEC. 131. VIEWS OF WARDEN CARTER.

Geo. W. Carter, Warden of the Wisconsin State Prison, in a letter to the Commission, says, in answer to the question, "What aid should be given to discharged prisoners to prevent them from falling again into crime, and to assist them in obtaining employment?":

A work establishment, where wages can be paid and a certificate of good conduct given on discharge. This should not be confined to ex-convicts, but all tramps and unemployed who apply should be received. By this means it would not be regarded simply as an ex-convicts' refuge, and shunned for that reason.

#### SEC. 132. VIEWS OF WARDEN BRUSH.

A. A. Brush, Agent and Warden of Sing Sing Prison, New York, in a letter to the Commission, dated July 12, 1886, suggests as the best aid for discharged prisoners:

An agency, with funds from the State, for procuring employment.

#### SEC. 133. VIEWS OF MR. HIGHTON.

E. R. Highton, in a letter to the Commission, dated July 23, 1886, says, in answer to the question as to the best way of dealing with discharged prisoners:

Prisoners' aid societies, with some official recognition, and which would have an effective agency to meet and take charge of prisoners on their release, as practiced by the St. Giles, and the Dublin Prison Gate Mission, etc., and as described by General Brinkerhoff in his report to Gov. Hoadley, of Ohio, at page twenty of the Ninth Annual Report of the Board of State Charities, and as referred to by Dr. Byers, of Columbus, Ohio, in the Chicago News of April 10, 1886.

#### SEC. 134. VIEWS OF GENERAL BRINKERHOFF ON THIS SUBJECT.

General R. Brinkerhoff, of Ohio, has given a great deal of attention to this subject, and has published a small pamphlet which he entitles "Past Penitentiary Treatment of Criminals." He speaks of the fact that in the treatment of the criminal classes legislation deals almost entirely with penalties and punishment. Punishment is the antidote and cure-all of crime.

In short (says he) is it not time for legislators to know and remember that punishment without cure is of little value, and that prevention is better than punishment and cure combined? This fact, so palpable to any one who will give earnest attention to the subject, does not seem to have received practical application to any large extent until the present century, and even now its recognition by legislators is the exception rather than the rule. In our own country this is especially the case, and to our shame it must be said, we are far behind the best experience of the age in dealing with the criminal classes. Our jails remain substantially what they were fifty years ago, when De Tocqueville pronounced them the worst in the civilized world, and are nurseries of crime rather than its correctors. Our penitentiaries, with a few exceptions, are simply punishing places, and as a rule result in making men worse instead of better.

He then proceeds to say that the system of progressive classification, or Crofton system, as it is called, is rapidly becoming universal. This system has often been described, but as General Brinkerhoff speaks of it with particular reference to the subject of aid to discharged prisoners, we shall use his language to show what is done in this respect in England.

#### SEC. 135. DESCRIPTION OF THE CROFTON SYSTEM.

The Crofton system proper grades its prisoners into three or more classes. At Elmira these classes are all in the same prison. In Ireland, they are in three separate prisons, located at a distance from each other. In its best form, the prisoners are not sentenced for a definite period of time, but are sent to prisons as patients are sent to the hospital, to be cured, and not to be discharged until they are cured. The duration of confinement, therefore, is entirely dependent upon the prisoner himself.

At Elmira he starts in the second class, and he can go up or go down, just as he will. But a system of marking his position is accurately and constantly located. A certain number of good marks, and a certain period of good conduct brings the privilege of a trial discharge on ticket of leave. Outside the prison walls he is still a convict under sentence, and subject to be recalled at any time for misconduct. If his conduct continues good, so that he fully establishes a trustworthy character, he is finally graduated into complete citizenship. This conditional discharge has proved so powerful an incentive for good that experiments have been made to utilize it in other prisons not conducted on the Crofton

system. In our prisons, as now constituted, the liberation of a prisoner at the expiration of his sentence is a matter of small moment to the prison authorities. He has served his term and discharged his obligation to the State. The doors are opened, and as he goes out the books are closed with the doors, and the State ends all further interest in his welfare. The discharged prisoner, of course, goes where he is most welcome, and that, as a rule, is to his old haunts, and among his old companions in crime, and the "last state of that man is worse than the first." In the judgment, however, of those who have given the largest consideration to the subject, the liberation of a prisoner is the most important moment of all connected with his punishment, and therefore, the post-penitentiary treatment of a convict becomes a matter of prime importance.

The Crofton system, with its indeterminate sentence and conditional discharge, recognizes this fact, and provides the necessary appliances for the future; and so vast has been its influence for good that it seems exceedingly important that we should transfer its benefits as far as practicable to our ordinary prisons. The only country in which this has been done to any large extent is in England, and most fully there in the County of Gloucester, where the idea seems to have originated, or at least where it first received public recognition and approval.

For the details of the working of this system, which is known as police supervision, I am indebted to Mr. Barwick Baker, who for nearly a half century past has been one of the Associate Justices of the County of Gloucester, and through whose efforts largely the system has been brought to its present condition of efficiency. It is an interesting history, but I have only time to consider the completed system as now operated under the Act of Parliament, adopted August 21, 1871, and through the concerted action of the Associated Justices of the County of Gloucester. I quote mainly from Mr. Baker's own statements. He says, as far back as 1839 Matthew Davenport Hill recommended that all persons convicted of felony for the second time should be placed under the supervision of the police. In 1869 this recommendation was carried into effect by the Legislature, but the powers given to the police were hardly sufficient. In 1871, however, the Act called Prevention of Crimes Act was passed, and under this the English Courts are now working. Under this law, when any one is convicted of felony, and a previous conviction of felony has been proven against him, the Court may sentence him to be under the supervision of the police for any term not exceeding seven years after the end of his punishment. While he is under supervision, he is bound to report himself every month to the police of his district, or to some person whom they may designate to receive it, and must give, if required, an account of his earnings and manner of living. Secondly, he must not remove from the district where he is living without giving notice to the police of the district. Thirdly, he must not remain in any district to which he may remove over forty-eight hours without giving notice to the police of the district. For disobedience to either of these orders he may be rearrested and returned to prison.

When a convict is sentenced to supervision, he will, while in prison, be asked where he intends to settle, and whether he is able to find work there. The Warden of the prison will then write to the police of the district, stating what time the man is coming there, and if necessary, desiring them to look out for some place of work for him. His railroad fare will then be paid to him, and he will immediately report himself at the nearest police station, where he will be told where he can find work, or if necessary, may receive aid from a discharged prisoners' aid society. If he continues there in steady work he will be free from molestation or interruption of any kind as a man of the highest character. He will have, indeed, once a month to report himself either to the police or some other person appointed by them. When they are satisfied as to his steady conduct, they may authorize the nearest Justice or clergyman, or even his own employer to receive his report.

If he wishes to remove to another district or to another county, he has only to go to the police and tell them where he intends to go, and they will write to the police of the district under whose care he will go on as before. Even if he change his mind on the road and finds some place of work, he has only to give notice to the police and state his history, and he may work in that district as long as he pleases. Thus so long as he conforms to the rules, he is little, if at all, worse off than the freest laborer. The practical operation of this law has proved itself much more satisfactory in every way than the old system, and one year of imprisonment, with seven years of supervision, is found far better than a longer sentence without supervision. In the nature of things this must be so. For if the man desires to reform, every incentive is afforded him. The police, instead of being his enemy, are his friends, and it is made their duty to help him and protect him as long as he shows a disposition to be a good citizen. If he is incorrigible the police knows where he is, and any overt act returns him to prison.

Concerning minor offenders, a similar system is recommended. Mr. Baker says:

I believe that with the introduction of a short and simple Act of Parliament, power might be given to Justices in a case where they would now ordinarily give twelve months imprisonment, and where, from the knowledge of the prisoner's antecedents, they might deem it a fit case to pass sentence of three years' liability to imprisonment, explaining at the same time to him and the public that he would probably be actually in prison for only one month, and pass the rest of the time under supervision, unless he is any way

misbehaved; that during this time he would have to find work and his character known, and, therefore, probably not at high wages; that he must report himself to the police and answer their questions every month, or, if you please, oftener; that he must pay a small sum, say a shilling a week, toward repaying all he has stolen, and secondly, repaying, part at least, of the expenses of his prosecution; that he must feel encouraged to hope to regain that character by the only means by which it can be regained, namely, by a long course of steady, honest life. I believe were this system well carried out, it would reduce our gaol population and the cost of it very greatly; that it would be more deterrent to those likely to fall into crime to see the criminal working among them for three years and repaying what he has cost the public, than to have him removed out of sight to a gaol of which they know nothing. I believe that earning his own living, under a strict but kind supervision, would be more reformatory than the prison; and I believe that a long supervision would be a greater safeguard to the public than the far shorter imprisonment.

General Brinkerhoff then continues:

Mr. Baker also advocates a system of police exchanges among countries and States, of information in regard to criminals, somewhat upon the plan of our Associated Charities. It was supposed that it would be very difficult to keep track of persons discharged in this way, but it does not prove so in practice. Even in the City of London, with a population of 4,000,000, where the greatest difficulty was expected, it appears from the police report of 1881 that out of 1,200 prisoners sentenced to police supervision there were not over 30 who were not regularly reporting. From the results of this system, after twelve years of experience in operating and observing it, Mr. Baker asserts that it can no longer be doubted that conditional liberation for a prisoner is an enormous improvement on the old system. This statement of Mr. Baker is fully corroborated by the best authorities in England. Mr. William Tallack, the Secretary of the Howard Association of London, who is in a position to know the general judgment upon the subject more fully, perhaps, than any other man, writes me in a recent letter that the preponderance of public sentiment is that the system operates "well and wisely." Mr. Tallack says that those who object to it do so upon the ground of its severity, and claim that it has "a cruel and discouraging effect upon the persons supervised after their discharge from prison."

That it is severe and discouraging to a confirmed criminal is doubtless true, but to a prisoner who desires to live honestly and regain his character, it is in every way helpful. I do not commend the system because it coddles criminals, but because it discriminates so as to restrain the incorrigible and help the repentant.

Now the question arises, can this system be operated in America? Personally I have no doubt of it. Very likely it cannot be carried out here as efficiently as in a compact and closely organized community like England, but I am very sure that it can be so operated as to be of great advantage to society, and without any additional machinery except the appointment of a State Superintendent of Discharged Prisoners, with power to command the coöperation of the ordinary police forces of the State. That this coöperation may be more effective, the Governor of the State should be made the executive head of the police of the State, the same as he is of the militia. The Superintendent of Discharged Prisoners should also be provided with a small fund out of which to relieve temporarily a prisoner in distress or out of work.

In this matter of prison reform, however, the ultimate end to be aimed at, and hoped for, and prayed for, is the entire reconstruction of our present prison system, and the universal substitution of the system of progressive classification, based upon the indeterminate sentence. Everything else is but patchwork; very necessary and very useful, but patchwork nevertheless.

## SEC. 136. DESCRIPTION OF THE GLOUCESTER SYSTEM.

General Brinkerhoff then proceeds to speak of the Gloucester system:

In the County of Gloucester (says he), an additional system of police supervision, in a modified form, has been extended to prisoners not included in the Acts of Parliament, and which has been created by agreement among the Judges and prison officials of the county. This is described by Mr. Baker as follows: "I feel some diffidence in suggesting a system which as yet has had scarcely six years of trial in its full extent, and only over one county containing 380,000 of population, and only 800,000 of English acres; yet I think it will be found on examination to have answered so well as to entitle it to consideration."

There is, unhappily, a feeling prevalent that punishment is given by way of retaliation or atonement for a crime, and that when a man leaves the prison he has paid his debt, has atoned for his wrong, and is entitled to be received as one who has not erred. Such a man conceives that he has a right to the same class of work and wages to which he was previously accustomed, and finding himself rejected, he thinks that he is unfairly treated, and that he is justified in obtaining equally good employment, either by suppressing the truth, or by direct falsehood, and when discovered and turned off, he



relapses at once to crime. It is much to be desired that all who have the opportunity Judges, Magistrates in passing sentence, Governors, officers—especially Chaplains—prisons—and those who take a kind interest in assisting prisoners after their discharge should impress upon them that the punishment is no payment of their debt to society but an additional cost, and therefore, increase of debt; that there can be no atonement in a compulsory submission, but that they may atone for the wrong and regain their character more or less, by taking a lower class of work, perhaps at lower wages, and by long course of steady conduct in the sight of men, building up the good name they for time lost.

It was long ago the theory in England that when a man had committed a crime and undergone his punishment, it was better that he should go to some new country, where he was not known, and begin a fresh life with an unstained character, even though obtained at the cost of concealment of the truth, by which he evades the natural and proper punishment of his offense. This was not found to answer. Even where the truth was not discovered, the man felt that he was obtaining employment under false pretenses, and either was unhappy through the dread of discovery, or, which had a still worse effect upon his mind, he became callous to the deceit. Though change of country is not often advocated now, yet there is still a prevalent idea that the police ought never to betray the antecedents of a recently discharged prisoner, even when they find him employed in a place of trust, which would have been refused to him had his character been known (thereby exposing the prisoner to the temptation of abusing the over confidence of his trust), in order to spare him the risk of losing the situation he has obtained through his concealment of the truth. This system of truthfulness also saves a discharged prisoner from imposition from his old associates. If a man has got a place with out his antecedents being known, and by good conduct has gained the esteem of his employer, and is highly trusted, and then is recognized by some rascal who knows his history, and threatens to reveal it, and demands hush money, the poor wretch is entirely in the rascal's hands, and may be driven, first to give up every dollar he has saved, and after that to plundering his employer to any extent—to prevent what? Why, to prevent the truth from being known. Had he never concealed or been allowed to conceal the truth, he would have risen, more slowly, perhaps, but he would have been safe. We believe that the punishment of imprisonment, though indispensable until we can find a better substitute, is unnatural, weakening, degrading, and costly; that the natural punishment of feeling the loss of character for a time, and struggling to regain the confidence of society, is healthful, strengthening, and ennobling, besides being costless, and that it is, therefore, much to be desired that we should use the former as little and the latter as much as we reasonably can. We therefore give to each discharged prisoner, whether sentenced to police supervision or not, a paper stating that it is his duty to inform his employer of the whole truth, and that if he does not do this, the policeman will probably do so. Further, if he has difficulty in finding work, the police will do what they can for him, and will assist him in all things, so long as he lives honestly and does not conceal his antecedents. The policemen are instructed, if they find a recently discharged prisoner in a place of trust, to inform the Chief Constable of the county, and to leave him to tell the employer or not, as he may judge best, but they have special instructions to be kind to all discharged prisoners, and to assist them with advice; or, if they find them in any distress not caused by their own misconduct, to help them with money from our charity fund. When we commenced this system, nearly six years ago, there were great fears that it would at least occasion some distress, and that much money would be required. We found, on the contrary, that all our discharged prisoners who remained in the country were carefully looked after by the police, and that all who were willing and able to work were employed, and that the sums given away were extremely small. The discharged prisoners generally speak with gratitude of the kindness they have received from the police, while the latter found it less trouble to be applied to as friends by the discharged prisoners, than to maintain a secret watch over them; and this more friendly relation to the police strengthens the discharged prisoner against temptation, and greatly lessens relapses into crime. We have not, in these six years, had one instance of the Chief Constable having to inform an employer of a discharged person's antecedents; and when there is nothing to conceal there is no fear of detection, and no possibility of being turned out of work or branding in consequence of being found out. It is true that there are many who object to employing discharged prisoners, and though we may regret this objection, we have no right to deceive them or allow them to be deceived; but there are quite enough employers who, either from kindly feeling, or for the sake of slightly lower wages, are willing to take such men, and the police can find out with very little trouble where to place any one who cannot find work for himself. The public appear to appreciate the being fairly dealt with, and many are willing to employ a discharged prisoner, with a full knowledge of his character, who would have turned one off who was found to have obtained employment without stating the truth. On the whole, on six years' experience, we can recommend the consideration of the measure to other countries.

In 1854, Sir Walter Crofton commenced his system in Ireland. Beginning with the same grounds as the Gloucester system, he simply carried it out and did not let the convicts go until places were found for them, and a watch was carefully kept upon them, and the employers of convicts knew it. Mr. Baker states that in 1861, he went with Baron Holzendorff and Col. A. Koryd to talk with a large number of tradesmen of Dublin, some of very high class, who employed some of the convicts, and they told him that, while at first they had not much liked taking them, they now hoped never to be without some of

them, as, though they did not trust them with money, yet, being under the watch of the police, and feeling that they were on trial to regain their characters, they were more to be relied upon for steady work than ordinary workmen. Mr. Baker states that similar experience has been obtained in London, where it was claimed that no man known to have been in prison could find honest employment, and where the police were instructed to be in prison could find honest employment, and where the police were instructed to take the greatest care to let the truth be known. In 1864, however, Mr. Murray Browne took the management of the Discharged Prisoners' Relief Society in that city (for short sentence men), and from the first determined not to place out any man without making known his antecedents. During the first, and all the eight years in which he retained the management, although over five hundred men each year were sent to him, there was not one for whom he was unable to find a sufficient place of work, and up to the present time the work has been carried on with equal success by those who followed him.

In America a similar experience has been found in the employment of persons discharged on parole or ticket of leave from the New York Reformatory at Elmira.

Mr. Baker, after an experience of nearly half a century in dealing with the criminal classes, sums up the results as follows:

I have now for over forty years acted as a visiting Justice, and I trust I have endeavored to improve the system to the best of my ability; but though I never like to find fault with or complain of an established system without being able to suggest anything better in its place, I have long felt a hope that, in the words of that very shrewd Chairman of Quarter Sessions: "England will not for much longer indorse a system of simple imprisonment as the only or chief means of preventing crime." In our own County of Gloucester the daily average of convicts in prison has decreased to an extraordinary extent.

In 1844 we had room for 860 prisoners (in seven gaols of county, city, and borough), and we were told that we should soon find this not enough. We have now shut up or pulled down six gaols out of the seven, and for the year 1881 the average number of prisoners was only 131.

Of the prisoners outside, under police supervision, a quarterly report is made by the Chief Constable of the county, and the following is his report to the Quarter Sessions, July 3, 1883:

<i>First</i> —Convicts on license under the Act of 1871:	
Total number .....	39
Earning an honest living .....	22
Transferred to other countries .....	10
In workhouse .....	1
Out of crime .....	33
At large, doubtful character .....	1
Returned to prison .....	1
Lost sight of .....	4
Total .....	6
Total .....	39
<i>Second</i> —Supervisees under the Gloucester system:	
Total number .....	68
Earning an honest livelihood in the county .....	28
Transferred to other counties .....	17
In workhouse as paupers (ill, etc.) .....	4
Out of work .....	3
Emigrated .....	1
Enlisted in the army .....	1
Out of crime .....	54
Relapsed and reimprisoned .....	6
Lost sight of (absconded) .....	8
Total .....	14
Total .....	68

In the United States, so far as I am aware, the only prison, aside from the Elmira Reformatory, in which practical consideration has been given to the Gloucester requirement that a discharged prisoner shall tell the truth as to his antecedents when seeking employment, is in Wisconsin. Prisoners there are invited and encouraged so to do. The results have been very satisfactory, and not a single instance is known where any person who had made a profession of honesty, and told where he came from, has ever been rebuffed.

### SEC. 137. PRISON ASSOCIATIONS.

In many of the States there are prison associations who engage, among other things, in aiding discharged prisoners. There is one in California

that has done, so far as we can learn, much good. The chief obstacle they encounter in their good work is in inducing those who have employment to give to believe that it is possible for a man who has committed crime to reform. A man who leaves prison is in a very deplorable condition. His greatest difficulties occur during the first week or two after release. His conduct during that time will afford almost a certain indication of what his future course will be. The convicts who knew him in prison will seek him and attempt to renew old acquaintances. If he is disposed to lead a better life, he is assailed by his old prison friends, who desire to turn the secret of his misdeed and disgrace into gold. During his incarceration in prison, he lives in a community pervaded by the moral or immoral tone given to it by the majority of the inmates. He is placed in the same cell or in the same workshop with hardened criminals. To throw off all these fetters, to emerge clean and pure from these surroundings, requires a strong effort, and as said, the first few weeks after discharge will determine whether he will make an effort, and whether his effort will be successful.

#### SEC. 138. EXPERIENCE OF MR. TAYLOR, AGENT OF CONNECTICUT PRISON ASSOCIATION.

This is a subject of deep interest, and whatever information we can glean from others who have labored in this field should be carefully studied, and we should gather what fruits we may from their experience.

Mr. John C. Taylor, Secretary and Agent of the Connecticut Prison Association, discusses the difficulties connected with this subject and the varied means that must be used in individual cases to procure the effect desired. He speaks of the smallness in area of Connecticut, and of the consequently small number of prisoners in the State Prison, and says:

But there is even a greater difference than this numerical one, namely, the difference in kind or character of prisoners. Fortunately, so far as this subject is concerned, Connecticut has no large cities, and we produce or develop few, if any, "professional" criminals. As you know, in the very large cities there are many persons who follow criminal pursuits with as much regularity, and nearly or quite as much system, as the honest citizen gives to his business. To these "professional" criminals, conviction is a risk, and a possible incident of their business, and they so regard it.

In the Connecticut State Prison there were confined, at a late date, 278 prisoners. Of this number there were for:

First offense	248
Second offense	19
Third offense	7
Fourth offense	2
Fifth offense	1
Sixth offense	1
Total	278

Among these 278 prisoners I do not believe 25 "professional criminals" can be found, and the few that we have are mostly those who have come into Connecticut on a little business trip, and, on the invitation of the Superior Court, have overstaid the limit of their excursion ticket. While there is a possibility that some of these may be reformed, the probability is that their highest immediate aspiration is to shake the dust of the "land of steady habits" from off their feet; at all events, that is their usual procedure so soon as the iron door of the State Prison opens for their exit.

The majority of prisoners who come into the Connecticut State Prison are young men, who, if subjected to reformatory influences during their imprisonment, may, with a fair prospect of reformation, be discreetly assisted to obtain honest employment when they are discharged from prison. I say this much by way of preface, to explain the considerable degree of success which has seemed to attend the Connecticut Prison Association in its work of assisting discharged prisoners. Possibly the same amount of effort expended on a different class of prisoners would not result as favorably.

Before the organization of our association, the assistance rendered by the State to a prisoner upon his release from our State Prison was this: He was given a very ordinary

suit of clothes and \$10 in cash, and permitted to depart. For men who had been closely confined in a prison, subject to a monotonous and rigid discipline for years, this plan was very nearly the worst that could have been devised. In a majority of cases the \$10 given by the State to the discharged prisoner, instead of being any assistance was a positive detriment to him. The double-hinged, easy-swinging doors of the liquor saloon yielded readily to his touch, and he stepped into the place where he felt sure of being tolerated, at least, and where he could shield himself from the gaze of the public; for the newly discharged prisoner is abnormally suspicious, and instinctively shrinks from the gaze of everybody, feeling that whoever looks at him recognizes him at once as a discharged convict. This feeling is dominant with him, sometimes for months, and nearly always for days and weeks immediately after his discharge from prison.

By this time you are doubtless ready to ask me what are the methods of the Connecticut Prison Association, in its dealing with discharged prisoners. Each month the Warden of the State Prison furnishes us with a complete list of all prisoners who are to be discharged during the next month. From the prison records we make up the official history of each prisoner. The Chaplain of the prison adds to this official record a brief outline of each prisoner's past life, so far as he has been able to ascertain it, which in most cases is sufficiently definite to make a good basis for an opinion concerning the prisoner. Our association has a "standing committee on visitation." Each month this committee, accompanied by the agent of the association, meets in the Warden's office at the prison and has a personal interview with each prisoner who is to be discharged during the next month. Each prisoner has previously received a circular letter from the committee notifying him that they will soon visit him, assuring him of their friendly interest in him, and telling him of their object, viz., to assist him to obtain employment when he is released from prison. The circular invites him to submit to the committee his plans for the future, if he has any, in order that we may consider the advisability of assisting him to carry out his plans, if they are practicable.

When the prisoner meets the committee he is prepared to talk business at once. Perhaps he has parents or friends who wish him to come directly to them. If so, we note their address, and notify them when to expect him. Perhaps he has a wife and children who have been obliged, owing to his imprisonment, to take refuge in the almshouse; we make a note of this, and assure him that we will consider the matter, and will try and assist him to get work to enable him to realize his hope of getting his family together again at the earliest moment possible.

The next man may be without friends in this country—a stranger in a strange land. We note his circumstances, condition, capabilities, and needs; the Chairman or some member of the committee speaks a few kindly, assuring words to him, and he goes back to his cell with a ray of hope in his heart, and with the future looking a little brighter to him for the kindly words spoken, perhaps in his mother tongue, by some member of the visitation committee.

Thus the entire list is examined, while the agent makes a memoranda concerning each one of the prisoners.

When the day comes for the discharge of a prisoner he is met in the Warden's office by the agent, and accompanied to the office of the association in Hartford.

If the prisoner has friends who expect and desire him to come home, he is furnished with a ticket to his destination, and the agent sees him safely aboard the train, his friends being previously notified that he may be expected by a given train.

If the prisoner be the one whose family are in the almshouse, the agent, perhaps, enlists the sympathetic charity of some good people, who contribute articles of furniture or household utensils; a respectable tenement is secured, and the wife and children are brought from the almshouse to their new home before the day set for the discharge of the man from prison. When he is released, the man expresses a wish to first go and visit his family ere he goes out into the world alone to earn the means to enable him to take them from the hateful almshouse, but the agent, by a little strategy, succeeds in leading him in another direction, and when he is introduced into a comfortable little paradise (as it seems to him, just from years of a prison cell), and he finds his wife and children there, and he comes to realize that it is *his home*, and he learns how the miracle was wrought, there is a scene in real life which the lookers on are not likely to forget. I am sometimes met by persons who object to this, and who tell me that it is too good for the rascal, and it is better treatment than he deserves, better than men get who have never been in prison yet, etc., and I reply in the good old Yankee way by asking a question: Is it any better than the innocent wife and little children deserve? Is it not the best experiment that can be made, considering everything? And has the objector any better plan to urge in which he would like to cooperate? No; the objector has not. My observation leads me to the conclusion that the objectors seldom contribute anything besides their objections.

When I first undertook the duties of agent of the Connecticut Prison Association my method for securing employment for a discharged prisoner was to take the man to an employer, quietly explain matters to him, and urge that work be furnished him. I soon found out that this was "how not to do it." First, there was the natural and inevitable suspicion by employers. They admitted that it was a kind and charitable thing to do, indeed it was just the thing to be done for the discharged prisoner, and they were quite in sympathy with it, and we might put them down for a subscription to the cause, but just as they were situated with the class of men they had in their factory, etc., it did not seem best for them to make a place for the man, etc. On the other hand, if I succeeded in getting a man work, the fact of his being a discharged convict was almost certain to

leak out. The employer, as a matter of precaution, would tell the foreman, and the foreman would be confidential with some one else about it, and presently it became as well known as if it had been advertised in the leading newspaper in the middle of the editorial page with a red line around it. Some men were not as sensitive as others, and even the publicity would not discourage and drive them off; but I have had cases where men would relinquish their job and leave the town. I remember one case where a young man was employed on a farm in a small town. A horse disappeared one night from the pasture of some neighboring farmer. It was supposed to have been stolen, and there was considerable talk about it in the village. The second day after the horse disappeared, the discharged prisoner gave up his place and came to Hartford,—directly to my office. He said he could not stand it any longer. Everybody in town thought he had his hand in stealing the horse. I asked him if any one had accused him of it. Oh, no, he said, but they *looked at him suspiciously*, and he could not stand the pressure. I could not prevail on him to return. In a day or two afterwards the horse was found in a piece of wood several miles from his pasture lot; he had simply jumped out of the pasture and gone of his own accord. I made inquiries of the farmer for whom the discharged prisoner had worked as to whether there really was any suspicion directed against the man. So far as the farmer knew there was not the slightest suspicion of him. The man had simply suspected that he was suspected, and his imagination was more powerful than his reason—that was all.

Our method of dealing with discharged prisoners soon became known to the prisoners yet in prison, for matters affecting their interests get to be known to those in prison very soon, in spite of the most rigid discipline against communicating with each other. The result of this was that often the men when discharged from prison would absolutely decline to receive any assistance from the association if the acceptance of it involved the necessity of introducing them to employers or anybody as discharged prisoners. I have had them tell me plainly that they preferred to walk right out into the world without a cent than to accept aid coupled with such conditions; these were men that I believed to be earnest in their desire to build up a good character by honest industry; indeed, these were really the most hopeful cases we had.

I concluded to try another method, and now, after more than eight years of a trial of it, I should consider it a very long step backwards to return to the old plan. The new method is simply this: If a discharged prisoner whom I believe to be honestly inclined toward a correct life wishes to bury the past out of sight and mind I assure him that his past record shall not be revealed, and I give him all the assistance in my power to enable him to secure honest employment. If I know of any employers who need men, I inform him of the fact and provide him with a ticket to the place, purchase some necessary articles of clothing for him, and tools if he requires them, and give him money enough to pay his board for a week. I give him my address and request him to let me know how he succeeds. Should he fail in the one particular place he has sufficient means to live on until he can look about him; should he not secure employment during the week he writes me to that effect, and I furnish him with means to try further.

Some men are willing to be introduced as discharged prisoners, and prefer to go directly back to the place of their former residence, and "build up where they pulled down." In such cases I endeavor to secure a discreet and trusty friend for them there and through him assist them as they need.

During the eleven years in which I have acted as Secretary and Agent of the Connecticut Prison Association, I have had in my care about fifteen hundred discharged convicts, and each case has to be handled differently; that is, there is no absolute rule of action to be followed. Even such cases as offer no human hope of betterment we do not turn adrift without an opportunity to redeem themselves. For such cases we secure admission to the Temporary Home of Industry, on Houston Street, in New York. Here, under the careful and judicious management of Mr. Charles Stewart, the Superintendent, they can, if they will, provide for themselves stepping stones to a reformed life. Commencing by earning their own support, and a small surplus besides, at the employment furnished them in the Home, they will, if their conduct warrants it, soon graduate into places of honest employment outside.

If time permitted, I could cite you very many instances of men discharged from the Connecticut State Prison who have proved themselves worthy of confidence by years of honest industry. I am sometimes asked what percentage of discharged convicts is reformed. My opinion is based only on my observations within the limits of my own duties. Of all the prisoners discharged from the Connecticut State Prison, I feel safe in asserting that from 25 to 33 per cent never return to prison. Possibly, the percentage is even greater. It cannot be determined accurately.

I believe it would be well for the State to provide some plan by which "forfeited rights" could be restored without digging up the buried past, and advertising the history of the crime years after it had been forgotten by the public. A five or ten years' probation might be fixed by law, after which, if the discharged prisoner has lived an honest life, all rights forfeited by his conviction should be quietly restored to him. As it is now, many who might secure a restoration of their forfeited rights prefer to live and die under the ban rather than bring themselves and their families into unenviable notoriety by a compliance with the requirements of the present law concerning restoration of forfeited rights.

The subject of discharged prisoners does not perhaps call for any opinions concerning the causes of crime, but it seems quite proper that I should say that that which more

than all else tends to beguile discharged prisoners from the right paths, and from carrying out their good resolutions is, according to my observation, the ever-open and inviting ramshoop.

### SEC. 139. POSSIBILITY OF REFORMATION.

We do not wish to be understood as saying that it is possible to reform all convicts, or that aid should be extended to every one convicted of crime. There is a class of men who have spent most of their lives in prison. They take a pride in their condition, and are pleased with the homage paid to them by others of their class.

But there is another class, consisting of young men and boys, who have been led astray and have committed an offense against the law. A man belonging to this class feels joyful at his release, and determines never again to enter prison. The first week or so will determine what his future course will be, and it is during this time that he can be aided. He will during this time either seek employment or will yield to temptation.

Much has been said on this subject by philanthropists who, actuated by the best of motives, have sometimes been considered as not knowing much of human nature. The plain truth is that, because we have been on juries that have convicted men of base crimes, we have an idea that all convicts must be beyond all hope of reformation. There are many such, we concede. But there are many also who are almost as much the victims of circumstances as they are of vicious intentions. A Warden will not be accused of undue sympathy or of mistaken zeal. For this reason we call your attention to the statements of Mr. E. C. Watkins, Warden of the State House of Correction at Ionia, Michigan. As a practical man, dealing constantly with criminals, his views are entitled to consideration.

### SEC. 140. REMARKS OF WARDEN WATKINS.

He says, speaking of the law of Michigan:

Under the present law it is my duty to place the prisoner, when discharged, upon a railroad train, with a ticket for his home, if within this State; if not, then to his place of conviction. Less than 50 per cent of the men discharged have any home within the State, and but few desire to go back to the place from whence they came. The State pays them no money on their discharge, and the result is that many are lauded from the cars at the place they were convicted, with no money or friends, comparative strangers, known only by the officers who arrested them before, and perhaps a companion or two in the former crime. The officers naturally are suspicious and watchful of them, and consider it their duty to inform any man who takes them into his employ that they are recently out of prison. The result is immediate discharge from service, and the ex-convict starts out as a tramp. In some cases—many, in fact—further effort is made to secure work, sometimes successfully, and again the employer is informed in some manner of the prison history of the man he has employed, and again he is discharged, and does just what seems to be the only thing to do—tramps.

Is it any great wonder that, after repeated experiences of this kind, this outcast wanderer, branded as was Cain of old, feels that among respectable, Christian people, every man's hand is against him, and that he turns for sympathy and companionship to those who are less nice in their views and less select in their associates?

"Vice is a monster of such hideous mien

That but to be hated, needs but to be seen;

But seen too oft, familiar with her face,

We first endure, then pity, then embrace."

By this time the ex-convict has passed the point where he is *familiar* with the face of vice; he has endured, and is ready to embrace. For the time, vice is much more pleasing in her aspect than virtue. The latter has turned him hungry from her door, while the former has held wide her arms for the embrace, with the promise of relieving his hunger and clothing him in fine raiment. The man yields to the seductive influence of vice, just as thousands have done before and doubtless will do again, but in bitterness of spirit he soon finds his food has "turned to ashes on his lips," and his clothing is but the filth and rags of a lower degradation.

"The wages of sin is death;" the reward of vice is infamy; the price of crime is imprisonment. Outraged law must be vindicated. Society must be protected; and the man is returned to prison for a longer term than the first. He comes back sullen and morose; he cannot see any future worth living for, even beyond his term of imprisonment. The light of his life has departed. He feels that if he ever had any mission in life he has missed his opportunity of accomplishing it; that his best impulses are dead and he drifts hopelessly into the ranks of professional criminals. Crime has gained a zealous convert, but the State has lost a man who *might* have made a good citizen.

Does any one think the above but a fancy picture? I assert it is true to life, and that within my own knowledge more than a score of similar cases have occurred. There is a man now serving a term of three years in the State House of Correction—this being his fourth term of imprisonment—whose prison history, as he gives it, is as follows: He was committed to the State Prison, at Jackson, while yet under age, for an offense of which he insists, he was not guilty. But he served his term, and went out fully determined to keep aloof from all his prison associates, and by industry and honesty make for himself a name which should be respected in the community, in spite of his early service in prison. In a remote city in the State he found employment in a general store, and performed his duties so acceptably that at the end of nine months he had been promoted to one of the most responsible positions in the business.

But, unfortunately for him, at this time a man came along who had known him in prison, and felt it his duty to inform his employers. They called him in, talked the matter over, and upon his admission that he had done service in prison, gave him a month's extra salary, and discharged him. They told him that, whereas he had been a valuable man to them, and they had strong faith in his honesty, yet public sentiment would condemn them if they kept an ex-convict in a respectable position, and it would injure their business. He had saved his wages, and with the money in his pocket, and with some degree of hopefulness, he started to again find employment. He was less successful than before, and traveled far without finding anything in his line of work. Finally he determined to take anything that presented, and hired out to a farmer for general work on the farm. His employer was a Christian, a deacon in the church. After nearly a month's work on the farm, the information that he had been in prison in some way reached his employer. The good deacon promptly called him, and gave him a lecture on the sin of deceit, and peremptorily discharged him, *without pay*, and advised him to leave the town at once, as he would be likely to be arrested. The advice was followed, and again he sought work, going this time into the larger cities. Here he met men who had served with him in prison, and who knew of his determination to lead an honest life. They urged him to go with them, and give up the effort to be honest, telling him that he had the felon's brand upon him, and it would stick to him through life. But still determined to be honest, he finally found employment in a livery stable.

This man said to me with trembling voice in speaking of his experience: "I have many times turned down alleys and crossed streets to avoid meeting my old prison associates. But the liveryman, as had the others, finally heard of his past prison life, and his discharge followed. Discouraged and disheartened, and feeling that if he could not even fill the position of stable-boy because of his past record—that *all* places of honest employment were closed to him—he gave up the contest, sought his old prison associates and their help, and in a short time was convicted of a crime of which he *was* guilty, and sentenced to the State House of Correction. Since then he has served a second term in the State Prison, and is now serving his second term of several years duration in the State House of Correction. Does the responsibility rest wholly on this man that he is not to-day a free and respected citizen? And if not, upon whom does a share of the responsibility rest? I answer, the State. The business firm, the farmer deacon, the liveryman, were not to blame for discharging him, when they knew he had been in prison, convicted on the judgment of twelve men sworn to find a verdict according to the fact. In their minds the thought came that he might be a dangerous man—have murder or theft in his heart—and they did just what three-fourths of the honest citizens of Michigan would do. But the State owed to this man—fairly and justly owed to him—*protection and aid* when he was first discharged.

Under the laws of the State he had been convicted in the first instance, whether innocent or guilty makes no difference, and paid the penalty by the imprisonment. Whatever of obligation under the sentence rested upon him to do—hard labor for the State during the term of his imprisonment—had been done; the debt was paid and the State was bound to put him back among free men with a receipt in full. Was it done? No! He went out of prison with the stigma of a convict. On account of his imprisonment his chances for employment were much lessened—so much so indeed, that he was practically deprived of the means of gaining an honest living. The offense in the first instance was small; the imprisonment was of comparatively short duration; but the effect of it will be felt throughout his whole life. I cannot but feel that a duty rested upon the State—the duty of extending a helping hand, aiding and assisting in providing employment, and not withdrawing support, until his feet were firmly planted in the way of an honest living. Had this been done, we should have had no record of the kind I have cited, as I firmly believe, but instead, many years of the life of an honest man. In my judgment it might well be the policy of the State to furnish aid to discharged prisoners, from an economical view. It can easily be demonstrated that it is much *cheaper* to furnish the limited assistance necessary, and thus prevent crime, than to *capture, try, and punish* the criminal. The cost to the State for each conviction for ninety days for all of this class sent to the State House

of Correction, since the institution was opened, has not been less than \$50. About four thousand have been sent for this short term. Two hundred thousand dollars have thus been paid in the eight years since the State House of Correction was built, at that institution alone.

#### SEC. 141. SAME SUBJECT CONTINUED—PROPORTION THAT CAN BE REFORMED.

With the expenditure of \$10,000 to \$15,000 a year, through a State agent or a State association, for the relief and assistance of discharged prisoners, I believe that many of this large number could have been safely tided over the dangerous epoch in their lives and guided into ways of honesty. I do not wish to be understood as believing that all of these men could have been saved, even under the most favorable circumstances. I do not think so, nor have I any faith in the statement made and reiterated over and over at the meeting of the National Prison Association recently held in the City of Detroit, that 80 per cent of all criminals can be reclaimed under approved methods, and it is asking too much of my credulity to believe that the records of any prison or reformatory show any such per cent of reformed prisoners. But if one fourth of the percentage claimed can be reformed permanently, the subject is well worthy our attention, and may well call for some attention from our State Legislature.

Private aid societies can do something; indeed, in some States they have done much to aid discharged convicts to secure employment, but their efforts have always been attended with inconveniences that the person or society acting under the sanction of law would not meet. They have no positive right to interview prisoners while yet confined, a right which is essential to the proper understanding of the wants, needs, tastes, and habits of the convict whom it is proposed to aid on his discharge.

A local aid society (which has been suggested), so far as the institution now under my charge is concerned, would be of no practicable advantage. Our prisoners are all put upon the railroad trains with a ticket to their homes or places of conviction. Something broader and more comprehensive is needed.

In several of the States assistance to discharged convicts is provided for by law, Massachusetts and New York taking the lead. As the people of a State become more enlightened, greater intelligence and humanity marks their penitentiary system. M. Demits, the highest authority in the world on this subject, declares "there is no good penitentiary system without aid to discharged convicts." Michigan has taken an advanced position in her educational system, and also in caring for her purely unfortunate; but in the matter of aiding her discharged convicts she has done nothing. The enlightened, christian, and humane portion of our people, as well as all thoughtful men, favor judicious legislation on this subject. Is it not time that those especially interested in this work should speak plainly and with united voices?

The great need of the convict when discharged is immediate employment. Idleness begets all manner of crime, and this employment should be made certain, so long as the employed remains worthy.

A few years ago but little difficulty was experienced, by any one who was willing to work, in finding employment. But it is not so now. The demand for labor is not equal to the supply. The result is that a prison record becomes a serious matter, for a young man who has his own way to make in the world, to cope with.

A State agent or a society would, of course, find much less trouble in securing employment for a convict just out of prison than he would himself. In some countries public works are carried on in such a manner that employment is to be obtained for those who have been deprived of the reward of labor by imprisonment, and thus the convict, as he leaves the prison door, has the assurance that he can always find work to do that will at least provide food and clothes.

Napoleon Bonaparte, when he became Emperor of France, set at liberty many of the occupants of the prisons, and gave them employment on the public roads, bridges, and buildings, which he rapidly planned and constructed. All paupers, and the poor generally, were also provided with employment, if able to work. This was not done for the purpose of benefiting the class thus employed solely, but he wished to be regarded as their benefactor, and at the same time keep them employed, so they would have no time to discuss his methods or question his power. The result of this policy was that the best system of roads ever built in any country was constructed in France; and at the same time the people were prosperous, and idleness was almost unknown. I have thought that if our nation would build roads, bridges, and public buildings with the same class of labor, thus making it certain that a discharged prisoner could find work, even at a low price, it would be money well expended. At the same time it would draw from the treasury some of the surplus funds, the storing of which in the vaults of the National Capital has so troubled some of our political friends. It probably would not be safe to rely upon the contingency of such action, however.

If assistance is furnished by the State, it should be done in a wise and judicious manner. The man selected as the agent for the State should, first of all, have his *heart* in the work. He should be a judge of character, a good business man, and at the same time big-hearted, kind, and generous.

The discharged prisoner not only needs work, but he needs a kind word. He needs encouragement in the right direction, and the exercise of a watchful care over his first few days, or weeks, of freedom.

The empire that abolishes serfdom has taken a long stride toward enlightenment; the nation that gives freedom to its slaves is not only entitled to the gratitude of the enfranchised, but the respect and commendation of all the world.

But the State that saves from a life worse than serfdom, a degradation greater than slavery, a class of our people, our brothers, fathers, and sons, does a greater work. The people who stretch forth a helping hand to this class of unfortunates are worthy of all praise; and the man who saves even one fellow being, who has been branded as a convict, saves a *human soul*, and is worthy to stand with those of whom the Savior said: "Inasmuch as ye have done it unto one of the least of these, my brethren, ye have done it unto me."

#### SEC. 142. RECOMMENDATIONS.

In this State all that can be done, in our judgment, at the present time, is to provide an agency for aiding discharged convicts. This is the plan adopted in Massachusetts, and the results attained by it have been satisfactory. As to the appointing power, we believe the matter ought to be left to the Board of Prison Directors. They perhaps would be better able to form an accurate opinion of the qualifications necessary for the proper performance of the peculiar and difficult duties of an agent, than any other department of the government. He should be made amenable to them, should hold his position at their pleasure, and should receive a reasonable compensation for his services. It is a position that should not be sought or conferred for the pecuniary rewards attached to it. No man will give satisfaction who will not feel a deep love for his fellow men and a desire to see them live honestly and prosperously. We do not believe that it is necessary to define his duties by statute. A short clause added to one of the sections of the present statute governing the prisons would be sufficient. Such a clause might read: "The Board may appoint an agent for discharged convicts, who shall hold office at their pleasure, and shall perform such duties as the Board may prescribe. He shall receive for his services a salary to be fixed by the Board not exceeding — dollars per annum, payable monthly from the same fund as the salaries of other officers of the prison. The Board may allow him to expend in the performance of his duties a sum not exceeding \$2,500 per annum, from fund for support of prison. He shall make a monthly report to the Board."

The number of female convicts in this State is not so large as to warrant us now in recommending the appointment of an agent for female discharged convicts, although we believe that a woman should have charge of this branch. It will be well to see how successful the agent for male convicts will be before creating the position of agent for female convicts.

This is a subject that has not attracted the attention it should attract. We believe that we should do at least this much. In the clause quoted the Board have power to change the appointee if the results expected are not attained. We heartily recommend its adoption.

## CHAPTER VIII.

### THE POLICE AND DISCHARGED PRISONERS.

SEC. 143. Aid to discharged prisoners from police.

SEC. 144. Experience in England.

SEC. 145. Same subject continued.

SEC. 146. Same subject. Other services.

#### SEC. 143. AID TO DISCHARGED PRISONERS FROM POLICE.

In speaking of aid to discharged prisoners, attention is called to the plan pursued in England of police supervision. Should the policeman be the friend or the foe of the discharged convict? Should he endeavor to dog him, to arrest him on suspicion, or should he believe that it is possible for an ex-convict to lead an honest life if given some faint degree of encouragement, or even, if left unmolested as long as he is not guilty of any criminal act? Unhappily, many policemen believe that it is impossible for a convict to reform. They consider, many of them, that as he has once been a criminal he must continue to be one forever. Let it be said, however, that these officers are deserving of more credit and praise than are usually accorded to them. The few faults that can be found with police management show that policemen are earnest and faithful in the discharge of their duties.

In England, the plan of having prisoners, released on ticket of leave, report to the police was, when the measure was first proposed, bitterly opposed, on the assumption that the police were unfit to be trusted with this function, and would rather endeavor to drive the released convict from honest labor. Experience has demonstrated that this new duty intrusted to the police of England has been honestly performed, and that the fears expressed at the inception of this change, as to its results, have not been realized. The police of this State can do as well, if not better.

#### SEC. 144. EXPERIENCE IN ENGLAND.

T. B. LL. Baker, of England, speaking of the police of that country, with reference to their duties in looking out for men released on ticket of leave, says:

"In most countries of Europe, I think that within my own recollection public estimation of the police has altered considerably. Fifty years ago a policeman was valued merely as a watchdog to frighten thieves away, or as a bloodhound to track and capture them. Victor Hugo's description of M. Javert, in *Les Misérables*, though exaggerated, is but a type of the policeman of old days—violent in enmity to the bad, but scarcely believing in the existence of the good; the savage enemy of the one, but not seeking the friendship of the other. That a policeman should help a convict to become honest, that he should have any dealings with him, except either to drive him out of his district (to thief elsewhere) or to arrest him, would have been thought an unnatural proceeding. Enmity between the police and the thief was considered the natural and the wholesome state; but the police, though useful, were rather tolerated than loved or honored.

As time passed on, the few who thought at all on the repression of crime saw that it was highly desirable that policemen should be treated as reasonable and responsible



beings. And they were worthy of being so treated. Chief Constables were selected, not from old policemen of the Javert type, who had distinguished themselves as the enemies of all who were suspected of crime, but usually from officers of high standing in the army or navy, accustomed to organization and to a habit of firm but gentle command, with sufficiently large minds to prefer a general diminution of crime to an increase of arrests.

For many years, however, the due estimation of the police grew but slowly. In 1864 a new Act was passed to regulate our penal servitude prisons, which answer in some degree to your State Prisons, and a clause was introduced ordering that all criminals released on ticket of leave should report monthly to the police. I have now before me a book filled with extracts from the press of that year. Not only were there many papers which strongly opposed the measure, but I did not at that time meet with a single paper that advocated it, all declaring that the police were utterly unfit to be trusted, as they would certainly "hunt the licensees out of any honest work and drive them back to crime."

#### SEC. 145. SAME SUBJECT CONTINUED.

When, in spite of their remonstrances (and of the strong opposition of a *soi disant* liberal Government), the measure was passed by the House of Lords, a leading journal gave as its opinion: "A more decided innovation than that introduced into our police system was never carried by a majority of conservative noblemen. Hitherto the detection of crime and the arrest of offenders have been the only duties of a policeman. Henceforth the prevention of crime, by precautionary measures, will become a part of his office. And this was actually urged as being an evil!"

The journal was quite right in its facts. The prevention of crime has been since then considered the most important part of a policeman's office.

Hitherto men had been liberated from prison before the expiration of their sentence, without check or watch kept upon them, in the hope that they might gain an honest employment by dishonestly concealing the truth. The plan had not succeeded. Very many relapsed; and a panic set in, exaggerating the evil. In 1863 and some previous years, I think, we seldom took up a newspaper without finding three or four statements of "atrocities by ticket-of-leave men." In 1864 the Act passed, and in 1865 and the following years we hardly found one such statement in a week.

I think this had considerable effect in raising the public estimation of the police. It was felt that they were not merely antagonists to the criminals, but that they knew them, watched them, would be kind friends to them so long as they lived honestly, but could all the more readily detect them if they relapsed into crime. From that time, I think, a larger and gradually increasing number of the public have regarded the police, not as mere watchdogs to drive away thieves, but as friends to all—to the honest, as protecting them from loss; to the dishonest, as lessening the temptations which lead them to ruin.

This feeling can scarcely yet be called general throughout England, but it is steadily increasing. It is perhaps more advanced in this country than in most others, partly because we have an extremely good Chief Constable, and partly that our Justices have for some years employed our police as agents of the Discharged Prisoners' Aid Society; and when the public find them to be kind friends to the ex-convicts, so long as they work steadily and honestly, they are more willing to accept them as friends to all.

Of course it is not to be expected that each individual of so large a body will understand and enter into the high philanthropic feelings which should actuate the general force. Recruited, as our police force are, from the poorer and least educated class, there must be many merely strong, active fellows, useful if a riot should take place, still more useful in preventing it by their presence, but not men capable of much thought or feeling. Of course, also, we must expect to find among the number some sharp, clever fellows, who will attempt to gain credit for themselves by exaggerating a case against a prisoner, but, if firmly suppressed, such cases will be rare. Among so large a number, various faults must occasionally appear; but, if the Chief be himself a man of high, honorable principle, and a good judge of character, he will soon select from the number some men of thorough honesty, and with good and kind feeling, combined with quick intelligence. If he promotes such men as these, they will aid him to select others of a similar stamp, whom he may employ in offices of trust.

In the old days, it was considered necessary, in dealing with clever and unscrupulous criminals, to employ sharp and unscrupulous agents, and to meet cunning by cunning, and deceit by deceit. Now, scrupulous honesty is found, generally, to answer better. Certainly, in the old days, crime increased faster than the population. Now, it is rather diminishing while population increases.

It used to be considered that the duties of the police should be restricted to the repression of crime or offenses; but my old friend, General Cartwright, who for many years filled the office of Government Inspector of the Police of more than one third of England, gave it as his opinion that the more duties that could be intrusted to them, the more effectually and cheaply they would be performed. His advice has been generally adopted, and, in most countries, many extra duties are allotted to them.

#### SEC. 146. SAME SUBJECT—OTHER SERVICES.

In this country, besides acting as agents for the Discharged Prisoners' Aid Society (of which I have before spoken), telling them where they can find work, and, if necessary, assisting them with small sums of money, we have found the police of very great value in preventing the spread of contagious cattle disease. Last year, when many countries suffered very severely, although we had several outbreaks, in no case did it spread beyond the farm where it first appeared. Probably many thousands of people were saved by their care. The inspection of main roads is well within their province. The occasional inspection of weights and measures in shops, the inspection of common lodging-houses for the poor, the dispensing bread relief to vagrants (a valuable measure, as inducing the public to withhold careless alms)—all are ably performed by the police, with great advantage to the public, and not only without interfering with their duties in prevention of crime, but with positive advantage, as investing them, in the eyes of the public, with the character of benefactors to all ranks. I still, however, believe, that in England, at least, the general estimation of the police never has been, and is not even yet, as high as the men now deserve; and I feel confident that a more just appreciation of their office would not only give them more power, but would incite them to study still more to make themselves thoroughly efficient for an office which, in proportion to the rank of its members, is certainly one of the most useful and honorable in the state.

I will only add a few short statistics: Our police district has an area of 804,197 acres, and a population of 404,197 persons. The force consists of 312 men of all ranks, giving an average of 2,577 acres and 1,296 persons to each Constable. This may enable any American Chief Constable who may wish it, to compare the average forces of the two countries.

We believe that many duties might be intrusted to the police in addition to those now performed.



## CHAPTER IX.

## SUSPENSION OF SENTENCE.

SEC. 147. Suspension of sentence.

SEC. 148. Extension of practice.

## SEC. 147. SUSPENSION OF SENTENCE.

It is common in Police Courts, after a person has been convicted of some offense of which the Court has jurisdiction, to suspend sentence on such terms as may seem proper. We believe that such a system could be applied to convictions for felony with advantage. There are many cases where there has been an entire absence of criminal intent; still a technical breach of the law has been committed. The Court may feel fully satisfied that the prisoner is not a bad man, that his act was not of that character as to indicate a criminal disposition, and that to place him in association with old offenders, from whom he will receive free tuition in the arts of the criminal, will do him, as well as society, serious injury. By many the disgrace of a conviction is a punishment more keen than any other within the power of human ingenuity to invent.

## SEC. 148. EXTENSION OF PRACTICE.

Cases of this kind may without difficulty be imagined, and frequently come before the Governor for a pardon. If the sentence of the Court were suspended, all that a pardon confers would practically be granted. The person convicted would then in reality be under parole, without first having served a part of his time in prison. The Court could impose such conditions in granting the suspension as would insure his continued good behavior. He would escape the odium of having been a "convict." Of course a power of this kind should be exercised with discretion, and undoubtedly would be. There would be a certain amount of punishment preceding conviction. If for any reason the Court were satisfied that sentence should be pronounced, the power to do so would still exist. For these reasons we are satisfied that such a system might, in proper cases, be used, not only with safety to the community, but also to its profit.

## CHAPTER X.

## GRADED PRISONS.

SEC. 149. But one prison in most States.

SEC. 150. Difference in crimes.

SEC. 151. Character of prisoners.

SEC. 152. Objections considered.

## SEC. 149. BUT ONE PRISON IN MOST STATES.

In most of the States of the Union there is but one prison, to which all persons over a certain age are committed. If there are more than one, it is only because the number of prisoners is so large that the number of prisons must in consequence be increased. Yet to secure all the results that may be obtained by a well arranged and harmonious prison system, it seems to us that there ought to be in a State a graded system of prisons. By placing the one who has committed his first crime in the same building and workshop with the professional thief, there is in constant and powerful operation, against all the favorable influences of discipline and labor, the evil influence of association with the base and vicious.

## SEC. 150. DIFFERENCE IN CRIMES.

All crimes do not involve the same degree of moral turpitude, yet under our present system, all offenders are classed alike. There may, very properly, be a difference of opinion as to the number of prisons of different grades that should be provided for in a system such as we have called attention to. Almost everywhere the necessity is recognized of separating the youthful criminals from the old. There ought to be, however, in addition to an institution for the care of the young offender, two distinct grades of prisons. Under this classification there should be assigned to the first, those in whom there is hope of reformation, and to the second, those who are confirmed in their evil course. Perhaps, even, a more just and philosophical division would be to arrange the prisons into three classes, to the first of which those who had committed a first offense should be sent; another in which second-termers should be imprisoned, and a third in which the habitual and life-termers should be lodged.

Between the garroter, who follows crime as a trade, and the man who in anger or while under the influence of liquor has committed a crime, there is a wide distinction. A man may kill another under circumstances sufficient to incite almost any human being to similar action. The law must, for the preservation of peace and the protection of society, punish a man who gives way to his anger or resentment in cases where his life is not in imminent danger. Hence his act becomes a crime for which, on conviction, he is sent to a penitentiary. He there mingles with the most vicious of the human race, and the effect upon him cannot be beneficial.

## SEC. 151. CHARACTER OF PRISONERS.

A great deal has been said of the disinclination of society to receive again the man who has been a convict. Much of this is due, no doubt, to the character of the persons who, in public estimation, fill our prisons. There are bad men there, of course, and these give the character to the institution. The public cannot discriminate. It is known that a man has been a convict in San Quentin or Folsom, and it is assumed at once that he is a man to be shunned, and not to be trusted. It requires years for a man to live this down.

In a system of graded prisons this result would not follow. It is not in the interest of good government to place an everlasting black mark on every one who has violated its laws. Rather it should be the aim of the State to reclaim wherever reclamation is possible. By a graded system of prisons a distinction could be made between the different classes of offenders. The first-termier could be known as such, while the habitual criminal could be easily designated, and his intended depredations upon property guarded against.

## SEC. 152. OBJECTIONS CONSIDERED.

Of course, we are aware of the serious objection that such a system would require much money to inaugurate, and much more successfully to carry on. But as we have two prisons now in this State we believe that some such system could be carried out without much, if any, additional expense. We call the matter to your attention because we believe that, in the interest of good government and of the best prison management, there ought to be a graded system of prisons.

## CHAPTER XI.

## PRISON OFFICERS.

- SEC. 153. Prison officers.
- SEC. 154. Skill required.
- SEC. 155. Prison schools.
- SEC. 156. Non-partisan management of our prisons.
- SEC. 157. Views of Mr. E. R. Highton on qualifications of prison officers.

## SEC. 153. PRISON OFFICERS.

It must be evident that if the reformation of a prisoner is the principal, or, at least, an important consideration in prison management, the skill and training required to change a bad man into a good one cannot be acquired in a day. To accomplish this fully, or perhaps appreciably, requires a degree of preparation, an insight into human motives, a true sympathy, and an educated judgment, which, as in other pursuits, can only be obtained by training and experience. Hence a prison official should be trained for his calling, and when he demonstrates his fitness for the peculiar task which he has chosen, he should be assured of steady employment at reasonable remuneration. It has been too often assumed that any one is capable of taking care of a prison, of enforcing discipline, of aiding and reforming the prisoner, and, at the same time, of successfully carrying on the various industrial pursuits in which the convicts may be engaged.

## SEC. 154. SKILL REQUIRED.

The truth is that more ability and more versatility are required in prison officers than are generally demanded, as the price of success, from those engaged in ordinary business life. To insure the maintenance of proper discipline, the subordinate officers should be under the complete control of the Warden. He should be held to a strict accountability for all that goes amiss, and, justly, should exercise his own judgment, free from outside influence, in choosing his employes. If they are chosen for him by others, without regard to their competency, it is impossible for him to possess that power and control essential to securing the best results. If there is any institution to which Civil Service rules should be applied, it is a prison.

## SEC. 155. PRISON SCHOOLS.

In some countries in Europe, schools have been established for the purpose of training officers designed for service in the management of penal institutions. It is perhaps impracticable to do this in this country. But the fact that other countries have deemed it necessary to impart instruction in this matter tends to show that not every one, without previous training, will make a good prison officer. Yet the subordinates should be drilled by the Warden. They should at stated times be called together and instructed in their duties. This course will secure unity of action

and perfection in the carrying out of details. They should be taught the mainsprings of human action hope is a more potent agent than fear, and they should have not only an interest in their work, but also conviction that even very hardened criminals can be made to feel some respect for authority. This is to elevate prison management into the proper plane—a science and a highly important science. A man might adopt this pursuit as a profession and we might naturally expect all the fruits derived in other walks of life from study and experience as the result.

#### SEC. 156. NON-PARTISAN MANAGEMENT.

There are certain departments of Government that deal with matters important, affect the whole community so thoroughly and intimately, that their management should never be allowed to be affected by party politics. Our school system, the judiciary, the prisons, and insane asylums deal with interests of such importance to each person in the State, that they should forever be removed from the domain of politics. In one sense the proper management of the prisons is of greater importance to us than any other department of the Government.

If the framers of the present Constitution did one thing which more than another deserves the highest commendation, it is that portion of it relating to the State Prisons, taking them out of partisan control. An examination of the constitutional debates will show what a deep interest was taken in this matter. The non-partisan management of the prisons of California has received the widest and heartiest approval. The standard work on penology, that of Dr. Wines, entitled "The State of Prisons and Child-saving Institutions in the Civilized World," which describes the prison systems of the universe, with their advantages and their defects, gives in detail the provisions of our Constitution, and on page 185 the learned author and eminent penologist warmly adds:

Such, then, is the actual fundamental law of California in relation to this great question. It is difficult to see how, in a government like ours, prison management could be more effectually removed, on paper, from the domain of party politics. It remains only that the execution be carried out in the spirit of the theory with intelligence and vigor.

To the credit of the present management let it be said, that, in the language of Dr. Wines, the execution of the non-partisan intention of the Constitution has been faithfully "carried out in the spirit of the theory," and, it is hoped, "with intelligence and vigor." Our prisons are now placed on the highest plane of modern thought, so far as non-partisan management is concerned, and the step backward will never be taken. The interests intrusted to the prison directory are too important to be made the spoils of office seekers.

#### SEC. 157. VIEWS OF MR. E. R. HIGHTON ON QUALIFICATIONS OF PRISON OFFICERS.

At a meeting of the Prison Reform Convention of California, held at San Francisco, November 9, 1881, Hon. Geo. C. Perkins presiding, Mr. E. R. Highton read a paper on the qualifications and professional training of officers of prisons and reformatories. Mr. Highton said:

In order to arrive at an intelligent conception of the proper qualifications for officers of prisons and reformatories and the necessity for their professional training, we must understand the nature of the work they have to perform and the social and economical conditions which require it. This will involve a brief preliminary review of the modifi-

cations in public sentiment in regard to the treatment of criminals and an exposition of what has so far been evolved from practical experience in the prosecution of what may yet be called tentative efforts to diminish crime. The civilized world has been gradually but steadily coming to the conclusion that mere punishment serves only to harden the criminal and aggravate the social disorder.

"All punishment the world can render  
Serve only to provoke th' offender;  
The will gains strength by treatment horrid  
As hides grow harder when they are curried."

The efforts of the most sagacious and intelligent social scientists for more than a century, but particularly for the last fifty years, have been directed to the prevention of crime, and the result has been the establishment of juvenile reformatories and measures for the reformation of criminals through the discipline to which their crimes had subjected them, without any relaxation of an inexorable law which makes sin and suffering inseparable.

From the time when the abominations of the English prisons were disclosed to the British House of Commons in the year 1878, by John Howard, whose epitaph declares that he "trod an open but unfrequented path to immortality," and when Beccaria was publishing in Italy his celebrated treatise on "Crimes and Punishments," in which he anticipated many modern ideas on those subjects, there has been a growing conviction that a moral and industrial discipline of the criminal is more effective than any physical torture in diminishing crime.

Numerous experiments and investigations in various civilized communities, and international inquiries by such observers and thinkers as Beaumont and De Tocqueville of France, Dwight and Wines of the United States, Crawford and Russell of England, and other eminent authorities on social science here and in Europe, confirm this fundamental proposition. Reams of statistical tables, and the observations and deductions of the most competent political economists, sustain the conclusion, and have demonstrated also that the cheapest way to diminish crime is to reform the criminal; in brief, have shown that the performance of a Christian duty, in a Christian spirit, in this as in all other social obligations, is most conducive to the highest secular advantage. Why? It is not for us to determine. The whole subject of crimes and punishments is full of anomalies and paradoxes, and the accumulating questions which arise in any endeavor to analyze and trace the complicated and conflicting causes of crime, in order to show more clearly the necessity for a qualified and trained agency to diminish or eradicate it, would only confuse and perplex a simple question, however important to its due consideration it would be to have some general knowledge of its sources and character.

When the costly arrangements of the "model" prison at Pentonville, near London, were being shown to Ibrahim Pacha he turned to his attendant vizier and significantly asked the price of a cimeter; and the summary method of diminishing crime suggested by the illustrious Egyptian, it is to be feared, in various modifications, is as prevalent among unreflecting people in highly cultivated communities as it is among the uncivilized nations of the earth. For such a process, unfortunately, there are too many qualified, and training would be superfluous.

A brief but pertinent illustration of the effect of severe and brutal punishments of criminals may be obtained by recalling the facts that the times of Howard were also the period when the Dick Turpins, the Jonathan Wilds, the Jack Shephards, and other desperadoes, made it unsafe to travel the most public high roads near London, and when there existed a sort of brutal chivalry composed of thieves, police, and hangmen, in which the most daring criminal was esteemed a hero, owing to the distortion and perversion of human instincts, through Draconian laws and barbarous punishments. Similar results invariably follow similar practices, and wherever cruel punishments are substitutes for Christian duty, human life is most insecure, and thieving, pilfering, and other forms of crime, most general.

This rapid glance at some of the salient illustrations of penal legislation and the history of crime, may indicate the social conditions which have compelled those progressive changes in the methods pursued to limit or eradicate it, through reformatories for incipient criminals and a more rational and effective discipline for the convicted offenders. It may also suggest the magnitude of the work and the difficulties which obstruct the efforts of the prison reformer through a too general selfishness, public apathy, and popular ignorance.

If I may be excused for this hasty retrospect in order to awaken interest and to stimulate inquiry in regard to a vital question of public morals, I will now attempt to discuss more directly the agency by which the purpose I have indicated, it is hoped, may be most effectively and economically accomplished.

I shall assume throughout this discussion that the main qualifications for this agency, whether in prisons or reformatories, are identical. Underlying all other moral or intellectual attributes the "enthusiasm of humanity," as defined and illustrated by the author of "Ecce Homo," is most essential as an ever active impelling motive to a reforming agent. The earnest, brooding, but very practical, philanthropy implied in that phrase must not be confounded with a fanatical idea of remedies for social evils without the use of means or with a pulsing sympathy that would seek to evade the necessary consequences of wrong-doing. It involves only a steady disposition to do real good by adequate

means, of inflexible justice to society, and yet showing mercy to the erring and fallen without widening the "narrow path" of virtue. In proportion as this spirit of active human sympathy actuates any individual, and as it has been fostered and developed by early associations and training, will his special education for a prison or reformatory officer be accelerated. The work which he has to accomplish is to make the bad good, by the direct influence of one human being upon another, regulated by rules of discipline and guided by "love in law and law in love." In this brief but ample creed the prison or reformatory officer should be educated and exercise himself until he has learned to subdue all his passions, and to govern his temper, and even to ignore his own personality in his office, as an exponent of the fraternal beneficence of the State, while still a vigilant minister of the law.

Like the Spartan youth, or the trained Jesuit, the prison officer should be taught to subjugate his personal feelings, and to dismiss many conventional ideas in a concentrated devotion to his work. He must learn to consider the prison as his world, and any infraction of its rules, such as the introduction of prohibited articles or communications, or any breach, however slight, of its internal discipline, as serious crimes, which he ought never to condone from any personal sympathy. In brief, he must combine the martinet and the philanthropist, and even exaggerate the obligations of duty in the formation of habits of thought which, if apparently extreme, are still necessary to a ready and efficient performance of his peculiar duties. Thus soldiers have been trained until sentinels have been inconveniently rigid, though a very necessary protection; thus railway engineers become keenly vigilant, but morosely abstract to intruders; thus the sailor at the wheel appears deaf and dumb, because the safety of the ship interdicts communication; and so in varied instances, which our experience will suggest to us, habit induces a "second nature" adapted to a special object, and this cultivation of a particular idea for a laudable purpose is both justifiable and necessary.

We are confronted with a gigantic evil, growing out of abnormal conditions in society and in individuals, and, though police regulations and healthy social influences may do much to prevent its extension, a specially trained agency peculiarly adapted to correct it is nevertheless imperatively required.

Before any discussion of the practical development of this agency is attempted, it will be necessary to consider, first, the character of the discipline to be enforced; second, the conditions under which it is to be administered. Though the general qualifications and training of an officer for any reformatory system are similar, it must be evident that, as regards prison discipline, those systems in which the fate of the prisoner depends to a great extent upon the reports of the officers, like the English or "Irish" system, or any other modification of the "Machonichie plan," by which the term of imprisonment is diminished by the industry and good conduct of the prisoner, ascertained by a system of "marks," a higher degree of intelligence and moral integrity is required in the officer than for the ordinary supervision of prisoners under the "classified," the "solitary," or the "silent" system of prison discipline.

The conditions which most materially affect the administration of prisons or reformatories are, first, the structural arrangements of the buildings, and, second, the influences and methods which govern the appointments and control the institution, and which it must be very apparent should be entirely separated from party politics for reasons which will no doubt be fully discussed in this connection.

While experience clearly indicates the personal qualifications necessary for a good prison or reformatory officer, however diversified may be the modes of their application, the importance of special training is universally admitted. It is the general opinion of the wisest penologists that actual experience in a prison is the best, if not the only, method of training men for this work. Except at Louvain, in Belgium, I am not aware of any special school of instruction for educating prison officers. With regard to reformatories it is somewhat different, but even in these institutions the method seems to have been rather the gradual evolution of an idea from some organizing philanthropist than any preconceived system. Among numerous exemplifications of this conclusion I will select one, because it has been most prolific of beneficial results.

The "Rauhen Haus" or the "Redemption Institute," near Hamburg, in Germany, was commenced in an humble thatched cottage by Mr. Weichern and his sister, both largely endowed with the "enthusiasm of humanity," and from this obscure commencement has been derived what is called the "family system," which has been developed into the most effective and extensive reformations in Europe and Great Britain. The most successful reformatory in the world, the "Colonie Agricole," near Mettray, in France, was founded upon this idea by M. De Metz, who copied the plan of the "Rauhen Haus." He, however, established a training school for those designed to assist him in his work, in which he and a colleague trained from twelve to fifteen young men for a whole year, before he admitted a single inmate to the institution. The wisdom of this procedure was thus eulogized by the late Dr. Wines, who represented the United States at the International Convention, and who had visited and critically examined the reformatory.

"Mettray, with its magnificent reformatory results as the fruit and demonstration of that wisdom, is a living, visible, irrefragable argument in support of the value, the importance, the absolute necessity, of special preparation on the part of prison officers for their work. Let that argument for present purposes stand in the place of all others."

Major Du Cane, Director of English Convict Prisons, advocates the training of prison officers for their duty, like soldiers or physicians, by actual experience.

Dr. Gullard of Switzerland, an eminent authority on prison discipline, says: "Special training, as well as high qualities of head and heart, is required to make a good prison or reformatory officer. The administration of public punishment will not become scientific, uniform, and successful, until it is raised to the dignity of a profession, and men are specially trained to it as they are for other pursuits."

This opinion is almost universal among those in Europe and America who are best qualified to form one.

Dr. Prosper Despine of France, who made a long and special study of the psychology of criminals, says: "Criminals are generally abnormal, and need treatment accordingly;" that "all are not alike, and must be studied," which of course requires both capacity and practice on the part of the officer.

Dr. James Anderson of New York says: "The criminal must have for his reformer one whom he *actually trusts and respects*—one whom he believes *means well*, even where the treatment seems severe." (The italics are his own.)

Throughout all civilized communities there is an absolute unanimity of opinion with regard to the primary mental and moral qualifications necessary to a good prison or reformatory officer.

In all of the best prisons in Europe it is stated that the authorities "are careful to select men of good general education, who have experience of life, knowledge of human character, firmness, and a serious and humane spirit."

In the propositions submitted to the American delegation at the International Congress, it was stated:

"ART. 8. No prison can become a school of reform till there is on the part of the officer a hearty desire and intention to accomplish this object."

"ART. 10. The task of changing bad men into good ones is not to be confided to the first comers. It is a serious charge, demanding thorough preparation, entire self-devotion, a calm and cautious judgment, great firmness of purpose and steadiness of action—a keen insight into the springs of human conduct, large experience, a true sympathy, and *morality above suspicion*. Prison officers, therefore, need a special education for the work as men do for the other great callings of society. Prison administration should be raised to the dignity of a profession," etc.

In summing up the lessons acquired from a most extensive and critical investigation of prisons and reformatories here and in Europe, Dr. Wines showed the absolute necessity of removing our prisons from the sphere of politics, and of the special training of officers, who "should be originally selected for their broad intelligence, good feeling, self-control, sound common sense, high moral principle, strong religious feeling, and other essential qualifications requisite for the calling."

The actual training of qualified persons for this calling must be effected in some prison with such a system as I have indicated. It may be necessary here to organize such a system in some existing prison, or in one built for the purpose. This may be difficult to accomplish, and the method by which such a system could be formed and established it is still harder to define or describe.

One condition is absolutely necessary—that the Governor or Warden who should have this duty to perform must himself be eminently endowed with the qualities which I have endeavored to describe or suggest. The delicate tact, the intuitive appreciation of character, the judicious selection of opportunity, and the various elements of personal influence, which are required in the efficient performance of his duty in the creation or maintenance of a system which would educate officers while founding a proper order of discipline, cannot be prescribed in any formulas, and must be developed by experience and exercise. I once heard an old horse-trainer say to a young man who had asked instructions how to manage a favorite colt, which he had found difficult: "Be patient and watchful, sir, and your horse will train you." It is very much the same with criminals.

With regard to subordinate officers there are also many impediments to the discharge of their duty from the perversion or depravity of their charge. It often happens that the social status and education of a prisoner are superior to those of the officer who has him in custody; and the prisoner, however subdued by long confinement, will still affect to claim this superiority and receive a command with a bad grace, and execute it with a stolid, aggravating reluctance. In such cases great patience and forbearance are requisite, and the supremacy of moral power over insolent presumption or affected sensitiveness should be shown in the patient firmness of a kind, intelligent man, with moral courage not to suffer the least relaxation of discipline, but who will make obedience pleasant, and, by the genial influence of his character and bearing, overcome such impudent attempts at insubordination. Constantly and instinctively to exhibit the opposite qualities of sympathy and sternness, "love in law and law in love," requires a peculiar character and training. To secure respect while administering punishment, and by a delicately adjusted method and tact to develop whatever there is of good and repress the evil in a mass of depraved, self-willed criminals, requires habitual self-control, a clear and ready perception of character and motives, with a fund of mental resources and tact to meet emergencies. To excite hope without presumption, and to make these criminals feel that such happiness as is possible to them can be attained only through *themselves*, and that subterfuges and evasions are of no avail to escape their proper punishment, should be the difficult but a paramount object of all penal and reformatory discipline. There are few so obdurate that they will not in some degree succumb to such treatment, if persistently and consistently carried out, or so reckless that they cannot thus be convinced that it is useless to wage war against society. Every officer of a prison or reform-

atory should be a moral instructor, assisting by precept and example those to whom a special duty of religions and moral instruction is confided; and, as industrial occupation in a prison ought to be no less a means of reformation than a source of revenue, the should also endeavor to acquire some general knowledge of these occupations, and cultivate and exhibit habits of cheerful, active industry, which better than precept will stimulate those in their charge to the willing performance of their daily tasks. The Governor or Warden of a prison should be an embodiment and living expression of the qualities which have endeavored to indicate. He must necessarily have a very wide discretion and almost despotic power, which he should exercise without ostentation, and at all times exhibit in himself a ready submission to rule. He must be strictly just and impartial, paying no regard to the social rank of the prisoner, nor be swayed or cajoled by hypocritical flattery.

"The difficulties of Governors have always been with the officers," says one Governor of a prison. He says further: "After long experience I find my real task with them," and goes on to illustrate by showing how rash and arbitrary exhibitions of authority by new officers often "lead to punishment or disputes, delicate for the Governor to decide." He rather thinks that the method of government was to blame, which ought to have anticipated and obviated such contingencies. Of course a Governor has to rule through his subordinates, but he should be careful in selecting and distributing them. It is popularly supposed that the mere application of rules to individual persons is all that is necessary in the management of a prison. If such an automatic system would succeed, very little training would be required, and ruling and directing a prison would be an easy task; but no perfunctory application of rules will ever control the perversions and self-will of criminals. Every order may be exactly stipulated and literally fulfilled by the officer to no purpose. It is the *spirit* in which duty is performed that will measure the success of management. A mere mechanical observance of rules or orders which relate to official method with prisoners, would often defeat their object. Still in the management of a prison in which officers would be properly trained, there are some cardinal rules which are important to observe, in order to secure the necessary conditions of order and subordination, without which the higher moral objects of prison discipline cannot be attained. But, first, it may assist us in obtaining a conception of a method, which in its essential characteristics cannot be formulized, if we acquire some idea of what a prison should be in which officers would be properly trained and which would represent the idea of a Christian state in the punishment and treatment of its criminals.

Whatever its mode of discipline, a prison is an institution where persons convicted of crime should be placed in absolute seclusion from the outside world, and where further contamination should be prevented by individual separation or classification. Order, subordination, and quiet should pervade it. No intrusion of unauthorized persons should be permitted, and, except as allowed by the regulations for periodical visits to prisoners by their relations and friends, no visitor should be received without the special sanction of the proper authorities. Suitable means for the employment of prisoners and for their religious and moral instruction should be provided. The Governor or Warden should hold a daily formal court to hear and determine complaints against prisoners and applications from them, so as to avoid irregularities or hasty action, and every transaction within the walls should be conducted with calm dignity and steady, systematic consistency and firmness.

This seemingly impassive but really vigorous method, while the best for reforming and only just to the quiet, reflective, and perhaps repentant prisoner, would exert a powerful deterring influence upon "hoodlums" and habitual criminals, who dread nothing more than to be subjected to a strict, steady system of order, where there is no opportunity of excuse afforded them to display their ruffianism and hostility to officers of the law.

The following are a few of the elementary rules necessary to form habits and ideas of duty in the education of an effective prison officer:

1. No officer should ever be allowed to strike a prisoner unless in absolute self-defense.
2. No punishment should be immediate. If a prisoner is refractory, the intelligence and tact of the officer should supply the means to avoid conflict and secure the offender, if the prison arrangements for supervision and mutual support of the officers are such as they ought to be.
3. No altercation should ever occur.
4. No officer should ever bribe by any indulgence a prisoner to obey or to perform his task of work.
5. If the system permits or requires the employment of prisoners in the service of the prison, they should be selected for this relaxation of ordinary restraint with strict regard to good conduct in the prison, and no such favor should ever be granted or selection made without the express sanction of the Governor.
6. No prisoner should ever be allowed to exercise authority over another prisoner.
7. No officer should hold any intercourse or communication with the friends of prisoners.

I have made these suggestions of elementary executive principles rather to indicate a method than to supply a code of rules in which to train prison officers, as I have briefly attempted to describe a system of prison discipline, and the spirit in which it should be administered, to show what an officer should be trained to do, and the necessity of special training to fit him to do it, rather than to endeavor to prescribe minute directions for the various contingencies which may occur in the exercise of his duties. To attempt a lengthy metaphysical analysis of moral influence and motives would confuse, and I

could think of no better way to accomplish my object than by such an exposition as I have attempted. I have not speculated on theories, but confined my illustrations to what I and many others have witnessed, and which now exists in various degrees of perfection in numerous institutions throughout the civilized world. Referring to systems of prison discipline and the training of officers, I wish to make one additional observation about the peculiar conditions of this State with regard to its criminals, and that is that they are so heterogeneous as to render an eclectic system of discipline and peculiar qualifications and training of prison officers more than ordinarily necessary, and this allusion applies more especially to the Chinese prisoners.

However imperfectly the method I have adopted may have explained the details of a plan for educating prison officers, I hope it will have suggested an intelligible idea of the qualifications and training they require, and that at least it will have shown the necessity of creating a professional class of practically qualified and trained persons for managing prisons and reformatories.

The most effective reformatories are conducted on what is called the "family system," as I have already stated in my reference to the origin of that system at the Rauhen Haus, and its more extensive application in the Mettray Reformatory, to which I might add the one at Red Hill near London, Russeleyde in Belgium, and various others. For the education of persons qualified as I have described, no method can surpass that adopted by M. De Metz; and for its mode of application the principles I have tried to indicate will be found applicable, when modified and adapted to suit a milder discipline.

Under this system the administrative officer represents the father of a family of from twelve to twenty-four boys, whom he regulates, encourages, or represses, and influences for good by the power of a common sympathy and purpose, and the various means which an intelligent, philanthropic mind can devise. Association may be made as beneficial in reformation as it is generally pernicious in contamination. When Mr. Weichern was asked by Mr. Horace Mann how he created so wonderful a change in boys who had been the very outcasts of society, he replied: "By music and Christian love." The enormous percentage of reformations claimed at Mettray—85 per cent—so astonished Mr. Hill, the Recorder of Birmingham, England, that he investigated the published statement with all the "amiable incredulity" that such a claim was calculated to inspire in one so intimately acquainted with the methods and results of other reformatories, but he found the claim amply justified. When one of these gentlemen said to M. De Metz: "You have created the best reformatory in the world," he promptly replied: "Because I have had the best assistants in the world," and this was mainly due to his method of cautious preparation.

Such results of the family system and proper training demonstrate its superiority, and our common sense will at least concede that it follows a natural order in supplying, though by artificial means, the very general want of proper family influence among the waifs and strays of society.

The training of officers for such an institution consists mainly in developing and directing a qualified individual so that he may acquire the best methods of exerting influence over the children, and of stimulating a virtuous emulation in the "family."

The structural arrangements required for this system are very cheap and simple, and can be extended at little cost.

The system, method, and its results are amply described in various American publications—by Horace Mann in his "Educational Tour," by Professor Stowe in his "Report on Elementary Education in Europe," and by Mr. Colman in his "European Agriculture." They are also referred to and urged as examples for our imitation in this State in communications signed "Incognito" to the *Alta California* of September and October, 1858, and in a leader of the same date; in another communication signed "Civis," on the fourteenth of January, 1874; in an address on municipal reform, delivered in the rooms of the Chamber of Commerce, published in the same paper of January 27, 1872; in a pamphlet which I published in 1866 on municipal affairs, in which some illustrations of our own methods are given, and in various communications to State Governors and influential persons in the community. In referring to these publications I have an object beside the information they contain, and that is, to suggest the great difficulties which will have to be overcome in introducing effective systems for juvenile reformation and prison discipline in this State. As one of its pioneers I may be excused, I hope, for this reference, and for interesting myself for nearly twenty-five years in these special questions, and if my experience in efforts to establish good systems for reformatories or prisons should add force to what I have already urged with regard to the necessity of separating these institutions from party politics, I need not now at my age suppress it through any fear of misapprehension. The "Industrial School" was built after some fanciful obsolete prison plan, at the advice of an utterly incompetent person who had had some remote connection with a philanthropic institution at the East, and in spite of honest, earnest advice, and it has cost more in alterations than would have built a reformatory on the family system, while its cost of maintenance has been unnecessarily great, and I doubt if it has effected one genuine reformation.

The "State School of Reform" projected near Marysville on the banks of the Feather River, was an expensive abortion. I had been requested by the Governor of the State to examine it, and I did so, but could find no adaptation in the arrangements for a reformatory. I found one of the Trustees in Marysville, who knew nothing at all about it. In a report from the Trustees, dated Marysville, December 26, 1860, there is an account of moneys paid for salaries to Trustees, for plans, specifications, and to the contractor,

amounting to \$12,124 64, and it concludes by saying that it would take \$30,000 more to finish a sufficient portion of the building to start the school." That is the last I have seen or heard of this expensive fiasco. I went to the Legislature, then sitting in Sacramento to try if anything could be done to get the site changed from the comparatively unhealthy banks of the Feather River to Benicia, or some other healthy locality, and the means suggested to accomplish my purpose I can only say were peculiar and most decidedly inadmissible.

I mention these facts to illustrate our failures; but there is no reason why, if we regard the lessons of experience and exercise a docile prevision, we should not yet avert the evils which have grown to such magnitude in older countries, and which are costing so much in efforts to remove them, and establish models reflecting back the benefits we have derived from their experience. The same mental and physical energy which produces the "hoodlum," through parental and social neglect, would, if properly educated and trained, supply an effective agency for correcting and reforming him. In the physical world, antidotes are often found in close proximity to poisons, and an analogous prevision may exist in the moral order of things.

I hope I have not committed an unpardonable solecism in these outside allusions; and now, having given my ideas of the necessity of professional training for a system of discipline which I have endeavored to describe, but which it may be difficult to realize completely with all our human imperfections, I will refer for our encouragement to one example within my own knowledge, to show that it may be closely approximated, even under very unfavorable conditions. One of the largest prisons in the world, with very inadequate accommodation and then in a state of chronic anarchy, was taken in charge by an individual whose principal qualification at that time was intense earnestness. The capricious, fitful management of an intemperate Governor had quite demoralized it, and there was a general spirit of insubordination amongst the prisoners and of tyranny and self-assertion among the officers. Punishments were numerous and severe, and there was always a large number of prisoners in "irons." By management, weeding out unreliable or unsuitable officers, creating confidence and increasing the officers' pay according to good conduct and length of service, with other methods suggested by occurring exigencies, the prison was gradually reduced to order, and it supplied superior officers to other prisons which, moreover, copied its methods. Though it could not be said that no communications passed between prisoners, there could be little contamination. In two years the punishments were reduced more than one half, and from that time, and certainly for several years, it was not found necessary to place any prisoner in irons.

Still the authorities deemed it wise and cheapest to build a new prison adapted to a more perfect discipline.

Before I close these remarks, it may be proper, though it can be scarcely necessary, to advert to another forcible argument in favor of improving our prison and reformatory systems and methods. It may be asked is it just to place any member of society whose moral contamination is almost certain and every moral sensibility he may have annihilated? It has been said that "the worst use you can put a man to is to hang him." A Christian community could hardly consent to such promiscuous barbarity for all degrees of offenders, but how much better is it to condemn a man or boy to an imprisonment which will inevitably make him a curse to himself and society, a constant public expense, and a center of a baleful influence, which his prison education has specially fitted him to propagate?

In conclusion, it is only right to say that the introduction of such a system of discipline for prisons and reformatories as I have suggested, and the professional training of officers to administer it, would, of course, involve an immediate expense to the State and some change in our political methods; but these are trivial in comparison to the public benefits which would follow. The patriot and the moralist would rejoice in an improved public morality, and the financial economist may be assured that the investment would pay.

## CHAPTER XII.

### STATE POLICE.

- SEC. 158. Vigilance of local officers.
- SEC. 159. State police and parole system.
- SEC. 160. Escapes from prison.
- SEC. 161. Enforcement of Restriction Act.
- SEC. 162. Quarantine officers.

#### SEC. 158. VIGILANCE OF LOCAL OFFICERS.

It may be said that some of the improvements in our prison management which we have suggested and recommended, will fail to be successfully carried out because their execution will depend in a great measure, if not entirely, upon the fidelity and vigilance of the local peace officers. We have considered this branch of the subject, and believe that the best results from a parole system, or from any method that may be devised for aiding discharged convicts, can be obtained best by officers whose jurisdiction will extend throughout the State. In some States agents are appointed to visit wards of the State placed under the care of private individuals. The method pursued in other countries, of police surveillance, has been explained, and all the evidence that we can obtain points to the fact that great good to the community has been the result.

#### SEC. 159. STATE POLICE AND PAROLE SYSTEM.

If convicts are let out on parole in a State as large as ours, there ought to be some one in addition to the local officers to see that the conditions of the parole are being faithfully performed. It may happen that a paroled prisoner was not living that life that he promised, and the Board of Directors expected, and still the local officers might be too careless to report the fact to the Board, or might be deterred from making a voluntary statement through fear of incurring the enmity of the paroled man's family and friends. A State officer would be free from such influences, and would be able to inform the Board of any case where the conditions of the parole had not been observed.

#### SEC. 160. ESCAPES FROM PRISON.

Escapes from prison will occur, and those who escape are sometimes the most hardened and dangerous criminals. At present their recapture must be made either by the guards or by local peace officers. The reward offered to the latter is so small that they may not be stimulated to their best efforts, and as the escape cannot be imputed to them there is not, naturally, that ardent desire to recapture as would be, if the escape could be charged to their negligence. In cases of this kind a State police could render valuable service to the State, and could follow an escaped prisoner



through various counties until finally he was arrested and returned to prison.

#### SEC. 161. ENFORCEMENT OF RESTRICTION ACT.

The people of this State know by bitter experience the evils of unrestricted Chinese immigration. They have suffered the evils attendant upon this cause with laudable forbearance. They have petitioned our National Government to grant relief. Their prayers have been partially answered. Laws have been passed forbidding the immigration of Chinese to this country save under certain conditions. There can be no doubt but that if this law was honestly and rigidly enforced, the evils of which we now so justly complain soon would cease. But the best law that was ever enacted is no more than a piece of blank paper unless faithfully executed. Whatever advantage will be derived from the operation of the Restriction Act will depend upon the manner in which its provisions are enforced.

Practically there is nothing to prevent the landing of immense hordes of Chinese laborers in British Columbia or Mexico. Once landed on these foreign shores, their entry to this country would be almost uninterrupted. Why? Because there is no officer either on our northern or our southern boundary to impede their progress. This matter is under the jurisdiction of the Federal Government. But we of California are more concerned in having the laws on the statute books relating to the restriction of Chinese immigration enforced than the powers that govern and will govern in Washington. A State police could effectually prevent the landing of Chinese who were not entitled to become residents of this country. Such police would be under State control, and would be responsible to the people of this State for the faithful performance of their duties. We believe that the services of these officers in this respect alone would be of sufficient value to the State to more than repay any expense that might be incurred in making a State Police a branch of the public service.

#### SEC. 162. QUARANTINE OFFICERS.

In many of the States the reasons that render the appointment of officers of this character necessary do not prevail. But California, from its length of seacoast, is beset by peculiar dangers. If a contagious disease should break out in any part of the world, it would be carried to this country through our seaports. A State Police could perform efficient service in quarantining vessels, and in watching trains coming into California from Arizona and Nevada. It must be conceded that we are imperfectly protected in this matter.

It is well known that some of the most dangerous criminals, after they have run their career in the East, make their way to California to pursue their labors in a new field. If such criminals were known the moment they crossed the State line, their actions could be watched and many of their deeds foiled. It is unnecessary to refer to instances where noted bank robbers, confidence men, and criminals of that character have come to California, and suddenly we are astonished by some daring act of crime. A State Police could guard in a great measure against these crimes.

## CHAPTER XIII.

### POLICE MATRONS.

SEC. 163. Services of police matrons.

SEC. 164. In Chicago.

#### SEC. 163. SERVICES OF POLICE MATRONS.

We do not know how seriously the proposition to employ matrons in a police station has been considered in this State, but in large cities there are many reasons why matrons should be employed to perform duties that they alone can properly perform. Many young girls are led to leave their homes, to seek the large cities for employment. When they come they are virtuous; but sometimes from one cause, and sometimes from another, they are led into evil ways, and eventually find their way into the police station. They have, naturally, an aversion to confiding their history and their troubles to a police officer, but can be easily induced to do so to some kind-hearted and motherly matron. They may, when talked to in a proper manner, be induced to quit their lives of sin, and to return to their homes.

#### SEC. 164. IN CHICAGO.

This experiment has been tried in Chicago with gratifying success, and we believe that if the practice were followed in California, in our larger cities, the results would be highly beneficial. Many a young woman, lured by the love of dress, has been led into a course of dissipation, from which she is too weak-minded, without moral aid and encouragement from others, to extricate herself. We believe that if one or more matrons were employed in each police station many of these women could be reformed. While we propose no legislation on this subject, we deem it our duty to suggest it as a question to which the attention of our municipal authorities should be directed.

## CHAPTER XIV.

## THE PARDONING POWER.

- SEC. 165. Existence of, necessary to correct mistakes.  
 SEC. 166. Remark of Marquis Beccaria, and reply of Chancellor Kent.  
 SEC. 167. Observations of Judge Story.  
 SEC. 168. Same subject continued.  
 SEC. 169. Exercise of discretion. Some observations.  
 SEC. 170. Restoration to citizenship.  
 SEC. 171. Remarks of Governor Pattison, of Pennsylvania, in inaugural message.  
 SEC. 172. Board of Pardons of Pennsylvania.  
 SEC. 173. Reference of applications for pardon to Board of Prison Directors.  
 SEC. 173a. Remarks of Rev. Wm. H. Hill on the pardoning power.

## SEC. 165. EXISTENCE OF, NECESSARY TO CORRECT MISTAKES.

We do not know that it comes within our province to speak of the pardoning power. This is fixed by the Constitution of the State in the Executive. Still, its proper exercise is essential to correct mistakes, relieve from unduly severe sentences, and reward those who in a signal way have distinguished themselves while in prison. If the parole system be adopted, the pardoning power will necessarily be limited to fewer cases than it would otherwise be. Still, it must always be a matter of grave importance to determine where the pardoning power should be lodged, and how it should be exercised. Our Secretary has written on this subject to each Governor in the United States, and their replies will be found in the correspondence annexed to this report.

## SEC. 166. REMARK OF MARQUIS BECCARIA, AND REPLY OF CHANCELLOR KENT.

It has been said by the Marquis Beccaria that the power of pardon does not exist under a perfect administration of law, and that the admission of the power is a tacit acknowledgment of the infirmities of the Court of justice. To this Mr. Chancellor Kent aptly replied:

And where is the administration of justice, it may be asked, that is free from infirmity? Were it possible, in every instance, to maintain a just proportion between the crime and the penalty, and were the rules of testimony and the mode of trial so perfect as to preclude every possibility of mistake or injustice, there would be some color for the admission of this plausible theory. But, even in that case, policy would sometimes require a remission of a punishment strictly due for a crime certainly ascertained. The very notion of mercy implies the accuracy of the claims of justice. An inexorable government, says Mr. Yorke, in his considerations on the law of forfeiture, will not only carry justice, in some instances, to the height of injury, but, with respect to itself, it will be dangerously just. The clemency of Massachusetts, in 1786, after an unprovoked and wanton rebellion, in not inflicting a single capital punishment, contributed, by the judicious manner in which its clemency was applied, to the more firm establishment of their government. And this power of pardon will appear to be more essential when we consider that, under the most correct administration of the law, men will sometimes fall a prey to the vindictiveness of accusers, the inaccuracy of testimony, and the fallibility of jurors. Notwithstanding this power is clearly supported on principles of policy, if not

justice, English lawyers, of the first class and highest reputation, have strangely concluded that it cannot exist in a republic, because nothing higher is acknowledged than the magistrate. Instead of falling into such an erroneous conclusion, it might fairly be insisted, that power may exist with greater safety in free States than in any other forms of government; because abuses of the discretion unavoidably confided to the magistrates in granting pardons are much better guarded against by the sense of responsibility under which he acts.

## SEC. 167. OBSERVATIONS OF JUDGE STORY.

Judge Story, in his "Commentaries on the Constitution of the United States," discusses the pardoning power. He refers to the remark of the Marquis Beccaria, that the admission of such a power is a tacit admission of the infirmity of the course of justice, and says:

But if this be a defect at all, it arises from the infirmity of human nature generally; and in this view is no more objectionable than any other power of Government; for every such power, in some sort, arises from human infirmity. But if it be meant that it is an imperfection in human legislation to admit the power of pardon in any case, the proposition may well be denied, and some proof, at least, be required of its sober reality. The common argument is, that where punishments are mild they ought to be certain; and that the clemency of the Chief Magistrate is a tacit disapprobation of the laws. But surely no man in his senses will contend that any system of laws can provide, for every possible shade of guilt, a proportionate degree of punishment. The most that ever has been and ever can be done, is to provide for the punishment of crimes by some general rules and within some general limitations. The total exclusion of all power of pardon would necessarily introduce a very dangerous power in judges and juries of following the spirit rather than the letter of the laws; or out of humanity, of suffering real offenders wholly to escape punishment, or else it must be holden (what no man will seriously avow) that the situation and circumstances of the offender, though they alter not the essence of the offense, ought to make no distinction in the punishment. There are not only various gradations of guilt in the commission of the same crime, which are not susceptible of any previous enumeration and definition, but the proofs must, in many cases, be imperfect in their own nature, not only as the actual commission of the offense, but also as to the aggravating and mitigating circumstances. In many cases, convictions must be founded upon presumptions and probabilities. Would it not be at once unjust and unreasonable to exclude all means of mitigating punishment, when subsequent inquiries should demonstrate that the accusation was wholly unfounded or the crime greatly diminished in point of atrocity and aggravation, from what the evidence at the trial seemed to establish. A power to pardon seems, indeed, indispensable under the most correct administration of the law by human tribunals; since, otherwise, men would sometimes fall a prey to the vindictiveness of accusers, the inaccuracy of testimony, and the fallibility of jurors and Courts. Besides, the law may be broken, and yet the offender be placed in such circumstances that he will stand, in a great measure, and perhaps wholly, excused in moral and general justice, though not in the strictness of the law. What then is to be done? Is he to be acquitted against the law, or convicted, and to suffer punishment infinitely beyond his deserts? If an arbitrary power is to be given to meet such cases, where can it be so properly lodged as in the Executive Department?

Mr. Justice Blackstone says that in democracies this power of pardon can never subsist, for there nothing higher is acknowledged than the magistrates who administer the laws; and it would be impolitic for the power of judging and of pardoning to center in one and the same person. This (as the President Montesquieu observes) would oblige him very often to contradict himself to make and unmake his decisions. It would tend to confound all ideas of right among the mass of the people, as they would find it difficult to tell whether a prisoner was discharged by his innocence or obtained a pardon through favor. And hence he deduces the superiority of a monarchical government; because in monarchies the King acts in a superior sphere, and may, therefore, safely be trusted with the power of pardon, and it becomes a source of personal loyalty and affection.

## SEC. 168. SAME SUBJECT CONTINUED.

But surely this reasoning is extremely forced and artificial. In the first place there is no more difficulty or absurdity in a democracy than in a monarchy in such cases, if the power of judging and pardoning be in the same hands, as if the monarch be at once the Judge and the person who pardons. And Montesquieu's reasoning is in fact addressed to this very case of a monarch, who is at once the Judge and dispenser of pardons. In the next place there is no inconsistency in a democracy any more than in a monarchy, in trusting one magistrate with a power to try the case and another with a power to pardon. The one power is not incidental to, but in contrast with the other. Nor, if both powers were lodged in the same magistrate, would there be any danger of their being necessarily confounded, for they may be required to be acted upon separately and at different times so as to be known as distinct prerogatives. But, in point of fact, no such reasoning has

the slightest application to the American governments, or indeed to any other government, legislative, judicial, and executive, and the powers of each are administered by distinct persons. What difficulty is there in the people delegating the judicial power to one body of magistrates and the power of pardon to another, in a republic, any more than there is in the King's delegating the judicial power to magistrates, and reserving the pardoning power to himself, in a monarchy? In truth, the learned author, in his extreme desire to recommend a kingly form of government, seems on this, as on many other occasions, to have been misled into the most loose and inconclusive statements. There is not a single State in the Union in which there is not, by its constitution, a power of pardon lodged in some one department of government, distinct from the judicial. And the power of remitting penalties is in some cases, even in England, intrusted to judicial officers.

So far from the power of pardon being incompatible with the fundamental principles of a republic, it may be boldly asserted to be peculiarly appropriate and safe in all free states; because the power can there be guarded by a just responsibility for its exercise. Little room will be left for favoritism, personal caprice, or personal resentment. If the power should ever be abused, it would be far less likely to occur in opposition than in obedience to the will of the people. The danger is not that in republics the victims of the law will too often escape punishment by a pardon, but that the power will not be sufficiently exerted in cases where public feeling accompanies the prosecution, and assigns the ultimate doom to persons who have been convicted upon slender testimony or popular suspicions.

The power to pardon, then, being a fit one to be intrusted to all governments, humanity and sound policy dictate that this benign prerogative should be as little as possible fettered or embarrassed. The criminal code of every country partakes so much of necessary severity that, without an easy access to exceptions in favor of unfortunate guilt, justice would assume an aspect too sanguinary and cruel. The only question is, in what department of the government it can be most safely lodged; and that must principally refer to the executive or legislative department. The reasoning in favor of vesting it in the executive department may be thus stated: A sense of responsibility is always strongest in proportion as it is divided. A single person would, therefore, be most ready to attend to the force of those motives which might plead for a mitigation of the rigor of the law, and the least apt to yield to considerations which were calculated to shelter a fit object of its vengeance. The consciousness that the life or happiness of an offender was exclusively in his discretion, would inspire scrupulousness and caution; and the dread of being accused of weakness or connivance would beget circumspection of a different sort. On the other hand, as men generally derive confidence from numbers, a large assemblage might naturally encourage each other in acts of obduracy, as no one would feel much apprehension of public censure. A public body, too, ordinarily engaged in other duties, would be little apt to sift cases of this sort thoroughly to the bottom, and would be disposed to yield to the solicitations, or be guided by the prejudices of a few, and thus shelter their own acts of yielding too much or too little, under the common apology of ignorance or confidence. A single magistrate would be compelled to search, and act upon his own responsibility; and, therefore, would be at once a more enlightened dispenser of mercy, and a more firm administrator of public justice.

#### SEC. 169. EXERCISE OF DISCRETION. SOME OBSERVATIONS.

While this power should exist, it should be exercised with great discretion, else it may subvert the principles of criminal law and punishment. By requiring the recommendation of a Board of Pardons as a condition precedent to the granting of a pardon, an abuse of this prerogative or its improper exercise is effectually guarded against. The publicity given to the acts of the Executive and the desire by his enemies to bring upon him public condemnation, may frequently induce those unacquainted with the reasons that exist for Executive clemency, to believe that pardons are granted indiscriminately, by favor rather than by merit. To few is it known that many a man is convicted upon insufficient testimony and lodged in prison either innocent or where there is a grave doubt of his guilt. Many, in an evil hour, have departed from the path of rectitude, and to these, when the law has been fully vindicated, all proper assistance should be extended. A pardon wipes away, in a measure at least, the disgrace of a conviction. It is essential to the maintenance of proper discipline in prison, that those who have labored diligently and endeavored to uphold the officers in their duties should in some way be signally rewarded. If they may confidently look forward to a time when their efforts will secure a release before the expiration of their sentence, hope and courage are

implanted in their breasts, and they have every incentive to do all that is exacted while in prison, and ever after to show their gratitude for the favor of Executive clemency by the subsequent course of their lives. Still, the exercise of this power is attended with many difficulties. If an apparently large number of pardons be granted, the public may conclude that the fear which offenders should have for the laws may be lessened, and consequently, that personal and property rights will in a corresponding degree be endangered. It is difficult for a Governor or Board of Pardons to become accurately informed as to the facts upon which the conviction was obtained, and as to the mitigating circumstances of the offense, if any, that existed. Too frequently is it the case that prosecuting officers will bend every effort to secure a conviction, and then, in a few months afterwards, will as strenuously endeavor to obtain the release of the prisoner. Mistakes must, in the exercise of this power, occur. We have already proposed the adoption in this State of the parole system. This plan will restore to the walks of honest life, those who are guilty of a crime, yet who show that they would make good citizens. The exercise of the pardoning power might then be confined to cases, where the innocence of the person is subsequently to his conviction made to appear, and the Governor would be relieved from a large portion of his most disagreeable duty.

#### SEC. 170. RESTORATION TO CITIZENSHIP.

It has been the practice in this State to restore first-termers who have earned the commutation provided by statute to citizenship. This is right in all cases where there is a disposition to reform. But it might be well to make restoration to citizenship dependent upon the prisoner's subsequent good conduct. One plan by which this could be accomplished would be to require him to appear before a Superior Court with proof that if admitted to citizenship again he would make a law-abiding member of society. As by the commission of a felony he has forfeited his right of suffrage, his restoration to this privilege should depend upon his good conduct after release, to be determined in a proper method.

Several of the responses received discuss the pardoning power. These will be found in the correspondence annexed to this report.

#### SEC. 171. REMARKS OF GOVERNOR PATTISON, OF PENNSYLVANIA, IN INAUGURAL MESSAGE.

This subject of the pardoning power has received much attention throughout the United States. Governor Robert E. Pattison, of Pennsylvania, in his inaugural address, said:

The exercise of the pardoning power by the Executive has been the subject of much public criticism; nor is this recent only. So great has become the popular complaint, that the convention which framed the Constitution attempted to correct what was admitted to be an abuse, by creating a Board for the hearing of applications for pardon, whose judgment should be submitted to the Executive for his assistance in determining the merits of such applications. Such a plan ought to result in fuller and more careful consideration and decisions more in accordance with the dictates of justice and humanity. I do not believe, however, that the Pardon Board was intended to be a Court of last resort for reviewing the legality of the judgments of the Courts below, and their decisions upon points of law and the weight of evidence. Our system of judicature, with its Justices, juries, Judges, and Supreme Court, provides the proper tribunals for the trial of causes, and has the confidence of the community. Their judgments should not be lightly treated or disturbed without overwhelming reason. The Pardon Board is not a Court for the trial of questions of law or of fact. It has become a truism, that it is not the severity so much as the certainty of punishment which prevents wrong-doing. This certainty cannot be secured if it is understood by criminals that after their cases have been fairly heard

and passed upon by every Court known to the law they may still experiment with sympathy and various judgments of a mixed Board of lawyers and laymen. I shall make it a rule to grant no pardon except for cause appearing since the trial, and cases of manifest injustice.

## SEC. 172. BOARD OF PARDONS OF PENNSYLVANIA.

And concerning the Board of Pardons of Pennsylvania, Governor Patison in his message to the Legislature of that State, January 6, 1885, says:

The work of the Pardon Board is a proper subject for public information, as a matter affecting the administration of criminal justice. The exercise of Executive clemency is a subject about which the citizens in the past have properly displayed a sensitive interest. I, therefore, lay before you in detail the action of the Board of Pardons during the time the present Executive has been in office. From February 20, 1883, to date, the Board has heard and considered the cases of one hundred and forty-four persons. The crimes committed by these applicants for clemency were:

Larceny .....	23	Receiving stolen goods.....	1
Burglary.....	18	Keeping bawdy-house.....	1
Assault and battery.....	19	Horse stealing.....	1
Murder in first degree.....	12	Uttering false instrument to defraud, etc.....	7
Murder in second degree.....	7	Riot.....	8
Arson.....	8	Felony.....	7
Robbery.....	7	Libel.....	7
Rape.....	7	Violation of election laws.....	6
Manslaughter.....	6	Carrying deadly weapons.....	6
Forgery.....	6	Sodomy.....	4
Embezzlement.....	4	Malicious mischief.....	3
Conspiracy.....	3	Seduction.....	3
Bigamy.....	3	Total.....	14
Entering with felonious intent.....	3		
Abortion.....	2		

Sixteen of these cases were recommended for clemency, and were pardoned by the Executive. The offenses of which these sixteen persons were convicted were as follows:

Larceny .....	5	Rape.....	1
Robbery.....	1	Violation of election law.....	1
Burglary.....	1	Assault and battery, and aggravated assault and battery.....	1
Arson.....	1		
Entering in night to commit felony.....	3		

The sentences of three persons were commuted—two for murder in first degree, from hanging to imprisonment for life, and one for burglary and larceny, so that the sentence expired at the end of two years and four months from its date.

The remaining one hundred and twenty-five applications were refused.

The work of the Pardon Board particularly calls for deliberate, painstaking, conscientious, and intelligent action. Its duties are of the most delicate, serious, and responsible character, affecting the most vital interests of the community. These requirements, I believe, have been fully met by the present Board. In every case recommended for pardon, there have been substantial reasons to warrant the extension of clemency, resulting either from after-discovered testimony, evidence of mistake, or other adequate cause, supported by the recommendation of the local officers of justice. In the cases refused, there has been an absence of sufficient evidence of innocence or injustice to call for the staying of the enforcement of our criminal laws.

## SEC. 173. REFERENCE OF APPLICATIONS FOR PARDON TO BOARD OF PRISON DIRECTORS.

Your Excellency has, by referring applications for pardon to the State Board of Prison Directors, placed the pardoning power on the footing advocated by the best thinkers of the country. By this means applications have been heard publicly, as before a Court, and every opportunity has been given for the presentation of protests and for arriving at the truth of statements made in a prisoner's behalf. The examination of an application is a task that involves much time and labor. Unfortunately the

Prison Directors receive no compensation for their services, and hence the performance of this labor has been done at a serious inconvenience to themselves. They have, however, done what to them seemed their duty, and have studiously avoided, except in very exceptional cases, recommending for Executive clemency those who were convicted of infamous crimes. The percentage of applications recommended, compared with those that have been made, is very small, yet each case required a patient and careful examination to determine its merits. The success and general approval of your course, undoubtedly will induce all future administrations to adopt a similar plan, to secure publicity and careful scrutiny of each application that may be made.

## SEC. 173a. REMARKS OF REV. WM. H. HILL ON THE PARDONING POWER.

At the Pacific Coast Conference of Charities, held at San Francisco, December 7 to 10, 1886, Rev. Wm. H. Hill, Chaplain of the prison at San Quentin, read a paper on the pardoning power, and in it said:

The pardoning power is a necessary but a most undesirable and thankless prerogative of the Executive. It is a necessary prerogative, and must be lodged somewhere; for no one in his sober senses will ever contend that there should be no pardoning power. And no better tribunal can be found than the Governor of the State. Other suggestions have been made and discussed from time to time, but the result has always been to leave that prerogative where it was found. I remember well one of these discussions in the New York Constitutional Convention of 1846, at which I was a reporter for the *Albany Evening Journal*. Prior thereto a great outcry had been raised against an alleged abuse of this power in that State, and the demand seemed to be almost unanimous for a limitation of this prerogative of the Governor, or a change in the source of its exercise. And yet the Governors complained of were such men as Silas Wright, William C. Bouck, William H. Seward, and W. L. Marcy—men of renown, men of feeling and good judgment, patriotic men, only wishing well to the State and people over whom they presided. I remember well the protracted debate on that subject, lasting for days, and participated in by some of the most eminent jurists and civilians of the State. The result was, as I have stated, to leave the power where they found it, only providing some guards against impositions on the part of applicants. The prerogative then is rightly placed, and there let it remain.

But I said it was an *undesirable* prerogative, and in this I am quite sure that I shall have the assent of every Governor that has presided over our State. I recall to mind a remark made to me by my worthy and highly esteemed friend, the late ex-Governor Horatio Seymour, of New York. It was at the close of his first term, in 1854. He said that the exercise of the pardoning power was the most perplexing and least satisfactory to him of all his duties and work as Governor. The applications had averaged one for each day, Sundays included, during the entire two years. He had not only to examine carefully the petitions and papers presented in each case, but many times—for he could not deny the privilege—to meet the mothers, or wives, or daughters, or sisters of the applicant, and sometimes all of them, who, on their knees and crying bitterly, would beseech him, in God's name, to grant their petition. So sad did he often feel, when a stern sense of duty compelled him to deny such an application, that he often wished he could throw off the gubernatorial robe, and be once more a private citizen.

I doubt not but such has been the experience and feeling of many of the Governors of this State. But, as I have already said, the prerogative must rest with them, and the responsibility must be met, cost what it will in mental worry and sorrow.

### HOW TO SILENCE PUBLIC CLAMOR.

I said, too, that it was a *thankless* prerogative. I do not mean by this that the recipients of gubernatorial mercy are ungrateful, or forget to return the merited thanks. I refer to the general public, and particularly to the managers of the public press, that "fourth estate in the kingdom." Scarcely will one open one of our city papers, after a pardon has been issued, but he will see some such heading as this: "Another murderer let loose!" or, "More robbers pardoned!" or, if more than one pardon be mentioned, something like this, which I have actually seen: "Wholesale prison delivery"—the accompanying article being in consonance with the caption. Some of our Governors, I am told, are sensitive about these comments. And yet why should they be? What do these writers know of the facts and documents, and reasons which moved the Governor? Nothing whatever. If I may judge of some of these applications, with which I was more or less familiar, I am sure that these same critics would have done precisely what the Governor did had they been in his place.

I call to mind a somewhat remarkable case. It was that of one of your fellow-citizens, who had taken the life of another. The peculiar circumstances of the killing were and

are known only to him and his God. He was convicted of manslaughter, and sentenced to a limited term of imprisonment. After about three and a half years' service, strenuous efforts were made for his pardon. Many petitions therefor were sent to the Governor. One of them was most cheerfully signed by myself, in my individual and official capacity. I did so because I believed his statement, that the killing was accidental. And even if not so, I believed that he had already suffered enough to atone for his act and vindicate the majesty of the law. But there was also a strenuous opposition to his release. When therefore, his pardon by Governor Stoneman came down to the prison I fully expected that vials of wrath would be emptied upon the head of the Governor. I opened the *San Francisco dailies* the next morning, expecting to see the usual headings, and more than the usual denunciations. But I found not a word of comment—merely the simple statement of the fact. Not one of them even "roared you gently as a sucking dove." The remarkable silence was a mystery to me for months, until the secret was disclosed. One of the Board of Prison Directors is the editor and publisher of a paper in San Rafael. Annoyed by the many and unfair criticisms of the action of the Board in recommending and the Governor in granting pardons, he wrote and published an able article, refuting the charges made against both in the public press, and by the people who followed in its wake. As a sample of what was often presented to the Governor, he published at length the pardon which Governor Stoneman had issued to the prisoner I have alluded to. It was a curiosity. After stating the fact of the conviction and sentence, the Governor went on to say that he had received from various sources petitions for the man's pardon. Among these he particularly noticed those from the editors and publishers of the leading journals in San Francisco and elsewhere, giving the names of the papers and their managers. In this list appeared the *Examiner*, the *Alta*, the *Chronicle*, the *Call*, the *Post*, and nearly all the respectable weeklies in San Francisco, and also a liberal sprinkling from Oakland and elsewhere. Is it any wonder, then, that these "thunderers of the press," these guardians of the public morals, were silent when this man was pardoned? They knew well that they had furnished the Governor with ammunition that would have silenced their batteries with a single shot. Hence with them "discretion was the better part of valor."

Governor Stoneman acted wisely in this proceeding, and were I in his place, I would, immediately after each pardon, publish, in some prominent journal, not only the reasons for the pardon, but also the names of the petitioners. The Legislature should appropriate \$1,000 each year for that purpose. This publication would do good in several ways. It would stop the clamor of the press and of outsiders; it would be a caution to men and women as to the character of the applications they indorsed; and it would also remind them in advance, that if their petition was granted, the public would hold them, and not the Governor, responsible for the pardon.

#### WHO IS A MURDERER?

Let me ask this question? "Who is a murderer?" It will not do to answer, "He that takes the life of another," for the law recognizes accidental killing, justifiable homicide, and a killing with so little of moral turpitude attached thereto as to demand and receive a punishment lighter than that meted out to him who robs a man on the highway of a paltry sum. Then who is the murderer? Courts may err—so may juries—and witnesses may be mistaken, to use no harsher term. Let me illustrate my position by an example or two.

There are two men now confined in the prison at San Quentin who have been sentenced for life, each charged with murder. One of them was actually sentenced to be hung, but his sentence was commuted to a life imprisonment. Both of these men have been torn from their families, and have each now endured nearly a decade of imprisonment. And yet neither of these men had anything more to do with the killing charged against them than had the writer of this paper. I say so because I have thoroughly examined all the evidence adduced at the trials, and since developed, and confidently assert, that to every candid mind, that evidence demonstrates their innocence. I say so, because hundreds of their friends and neighbors, who have known them for years, and who were familiar with the circumstances of the killing, are firmly convinced of their innocence, and have earnestly and repeatedly petitioned for their pardon. I say so, because in relation to one of them, an eminent jurist of this State, at the request of the Governor, examined and reviewed all the evidence in the case, and in an able opinion, not only declared his own opinion that the man was innocent, but ended his opinion with the emphatic declaration, that *had* the man been hung upon the evidence submitted it would have been no less than "JUDICIAL MURDER." And yet if he did the killing charged, it would have been "murder most foul," richly deserving a hanging by the Sheriff, if not by the mob. Why then should he be kept in prison for the term of his natural life? And what I say of one I say of both. Both were convicted by deliberate, willful PERJURY. That perjury, in each case, was not only subsequently confessed, but actually sworn to by the perpetrators. Yet these men are kept in prison, wearing a felon's garb, and marked with a felon's brand. Do you ask, "Why are not these men pardoned?" I cannot answer that question. I give you the facts; form your own opinions. I trust most sincerely that one of the first acts of Governor Bartlett will be to open the prison doors, and restore these men to liberty and to their families. If he will do this, I am sure that he will not do an act,

"That dying, he will wish to blot."

Nor are these men the only innocent ones in that prison. Ex-Lieutenant Governor

Johnson, who was for four years the Warden of the State Prison at San Quentin, once stated publicly, that he believed one in every six confined there was innocent. While I think this estimate is somewhat too high, I cannot demonstrate its incorrectness. I content myself with the assertion that there *are* innocent men there, and also many others whose crimes were attended with such extenuating circumstances that they have already atoned for their wrong doing, and law and justice are both satisfied. Now, the Governor must examine into the merits of all these cases when they come before him. Undesirable may be the task, as Governor Seymour said he found it to be, but it is a part of the Executive's prerogative, which cannot be laid aside. No Governor should, for he cannot with truth, announce in advance what his action will be in any particular case, or class of cases. He must be guided by the peculiar circumstances of each particular case, and decide rightly and mercifully in each, no matter what the clamor of the press and ill-judging people may be.

#### ALLEGED ABUSE OF THE PARDONING POWER.

But it is said that the pardoning power has been abused. So alleges the public press. So think and say a great many harsh judging, but not well informed people. The Governors who have been in office since my connection with the State Prison at San Quentin, have been Governor Perkins and Governor Stoneman, representing the two great political parties of the State. I believe that their exercise of the pardoning power is a fair average of the work of their predecessors also. And if so, I undertake to say that it has *not* been abused. Mistakes they undoubtedly have made—mistakes in withholding as well as in granting pardon. They would have been more than human had such not been the fact. It will be well to glance at a few statistics bearing upon this point. My figures are taken from the books at San Quentin and refer to that prison alone. Reckoning commutations as pardons, for in reality they are such, it appears that Governor Perkins pardoned 33 in 1880, 35 in 1881, and 100 in 1882, making 168 in all, or an average of 56 per annum. Governor Stoneman pardoned 37 in 1883, 49 in 1884, 58 in 1885, and 37 in the ten months of 1886, making 181 in all, or an average of about 45 per annum. The two have pardoned 349 in seven years, being a yearly average of 50.

Now is this a very large percentage of the more than 1,200 prisoners that we have in San Quentin alone? I think not. I believe that your verdict will be the same. It certainly does not look as if there was danger of a general jail delivery yet awhile. And this, too, coupled with the fact, that notwithstanding these pardons, and the further fact that from 25 to 40 leave every month, because their term of service has expired, the number in the prison is constantly increasing. The prison at Folsom is also crowded, and the time is not far distant when a third prison, to be located in Southern California, will be imperatively required. If Governor Perkins and Governor Stoneman *did* abuse their pardoning prerogative in what they did, it was fortunate for the people that the writer of this paper was not the Executive. For, as the result of his observation and inquiries during the last five years, he would have pardoned twice as many as did either of those two Governors, and yet would only have done strict justice and equity, both to the recipients and the people. Would it not be well if our people, instead of directing all their attention to these few ripples of the *ebb* tide flowing *out* of the prisons, should give more and earnest attention to the powerful *flood* tide, which is sweeping so many hundreds into them? If *that* can be stopped or averted it will be far better for the State.

## CHAPTER XV.

## CONVICT LABOR.

- SEC. 174. Difficulty of problem.
- SEC. 175. Necessity for labor.
- SEC. 176. Different systems of prison labor; lease system.
- SEC. 177. Contract system.
- SEC. 178. Supervision by prison officials; third kind of prison labor.
- SEC. 179. Some considerations.
- SEC. 180. Wages to prisoners.
- SEC. 181. Self-supporting prison.
- SEC. 182. Question of cost not only one.
- SEC. 183. Some views of the Commission.
- SEC. 184. Some suggestions.

## SEC. 174. DIFFICULTY OF PROBLEM.

The question of the employment of prisoners is one that has always been full of difficulty. At the present time, owing to the depression in business, and the consequent idleness among mechanics and laboring men, this question engrosses much attention. On the one hand, the taxpayer is eager that the cost of all public institutions should be as low as possible. He is apt to look upon a prison as a costly necessity, and without considering other questions, hastens to the conclusion that perfection in prison management is reached when the prison is made self-sustaining. On the other hand, the laborer looks solely to the effect that competition with free labor is supposed to have on the labor market. But there is in addition to its aspect as a labor problem, to the penologist, also the important object of reforming the convict, and of cultivating in him habits of industry, together with respect for and obedience to the laws. Questions of a penological nature have, in the discussion of this question, been to a great extent ignored.

## SEC. 175. NECESSITY FOR LABOR.

That prisoners must labor is evident to every thinking man. As said by the Superintendent of State Prisons for the State of New York, in his last report: "It is necessary for their physical and moral well being. The experience of the last hundred years in every enlightened nation in the world positively affirms this fundamental principle. The conspicuous prison administrators and the greatest prison reformers declare that *productive labor* by the inmates of prisons is a vital condition of success in reforming the convicts, and is the cornerstone in any practical and humane system. Besides, every week in the year, several men are sent by judicial sentences to the State Prisons, to be confined, and to be engaged 'at hard labor' during the term of their sentences. Unproductive labor is a curse to the prisoners; it fails to reform, but debases, hardens, and bru-

talizes. For this reason it is not to be tolerated; and it is less tolerable because the majority of the convicts in our State Prisons are young men, many of whom can be saved from continued lives of crime by the moral influences of judicious discipline, industrial training, and humane treatment in the prisons."

## SEC. 176. DIFFERENT SYSTEMS OF PRISON LABOR. LEASE SYSTEM.

Let us look at this system in its double aspect of (1) pecuniary profit and (2) interference with free labor. And before proceeding farther, it may be interesting to understand the different systems of labor, with their advantages and disadvantages, which have prevailed, or do now prevail, in different prisons.

It is customary to use the phrase "sentenced to hard labor." This term once had a signification not now given to it. In the United States there is no prison in which the treadmill and kindred forms of labor or of punishment are used, as a part of the labor to which the prisoner is subjected as an incident of his sentence. It is understood that the labor which the prisoner is to perform is labor in some branch of industry by which a revenue to the State is produced.

There may be said to be three distinct systems of this productive labor. The one producing the greatest amount of revenue, yet the one that is most objectionable, so far as questions of prison discipline and the reformation of the prisoner are concerned, is that known as the lease system. By this system the lessee has the sole control of the prison. He agrees to pay so much money for the management of the prison and the labor of the convicts, and his profit is derived from the earnings of the prisoners, and any reduction that he can make in running the prison. Sometimes the price paid to the State for the lease is very large, and of course the larger the price the more is the profit to the State. The lessee is compelled, as a matter of business, to see that the labor of the convicts will pay, not only the cost of their maintenance, but also the price which he has paid to the State for the lease, and whatever profit he expects to derive from his contract.

It is evident that this system is destructive of all prison discipline. The lessee's only object is to make money. It is to his interest to have as much labor performed as possible. It is also to his interest to reduce the cost of feeding and clothing the prisoners to the smallest possible sum. Hence, it necessarily results that prisoners are scantily fed and clothed, and greatly overworked. If as much profit is not obtained from the labor as was anticipated, the lessee endeavors to repair the loss by curtailing the expenditures for food and clothing. Towards the close of the contract, the condition of affairs is likely to become worse, as the lessee, having soon to turn the prison and its inmates over to other hands, has every incentive to exact as much labor from the convict as he can perform, and at the same time to expend almost nothing for medicines, or for properly caring for the sick.

Manifestly, this system is profitable to the State. The State is at no expense, but, on the contrary, for a number of years a certain profit is assured to it. The prison is certainly self-sustaining. But at what a cost! The prisoners are in most instances treated as animals, rather than as human beings. It is impossible, under such a system of prison labor, to effect anything like reformation. All discipline is destroyed. The prison is simply a money-making machine. In this only is it successful.



## SEC. 177. CONTRACT SYSTEM.

The next system of prison labor, and the one that is best known, perhaps, to the general public, is that denominated the contract system. This system, prior to the adoption of the present Constitution, was in vogue in California, and now prevails in a majority of the State Prisons. Under this system the management of the prison is retained by the State, but the labor of the convicts is let out to contractors at a stipulated price per day for each convict employed. During the day, the prisoners are under the control wholly, or to a partial extent, of the contractor or his agents. The clothing and food are supplied by the State. The State punishes for offenses and infractions of the prison rules.

From a penological standpoint, this system, while greatly preferable to the lease system, is objectionable, because it places over the prisoners during the day men who are not employed by the State; and hence it may happen that the men placed in charge of the prisoners are such that they will permit the sale of contraband articles to the convicts, or engage in the traffic themselves. This system is known everywhere as the "contract system." It has met with violent opposition, because, aside from other objections, by fixing the price of labor at a small pittance per day, it decreases the standard of wages.

The distinctive feature of this system is, that a day's labor is paid for, not the result of that labor. If the price paid is fifty cents per day, one prisoner's labor may be worth five dollars, another's may be worth only twenty-five cents. The Constitution of California, in Article X, declares: "After the first day of January, eighteen hundred and eighty-two, the labor of convicts shall not be let out by contract to any person, copartnership, company, or corporation, and the Legislature shall by law provide for the working of convicts for the benefit of the State."

## SEC. 178. SUPERVISION BY PRISON OFFICIALS. THIRD KIND OF PRISON LABOR.

This leads to a consideration of the third system of prison labor, where the prisoners engaged in labor are entirely under the supervision of the prison officials. This may be of two kinds, the first known as the "public account plan," and the second as the "piece price plan." Under both of these plans the institution is run as a manufactory run by a private individual would be. If the State owns the machinery and buys the raw material, it places the articles manufactured upon the market for sale. It receives the market price, no more, no less. If a private individual is willing to buy the material and some or all of the machinery, he is compelled to pay so much apiece for the manufactured articles, the price being determined by what he would have to pay to obtain the same results from free labor.

## SEC. 179. SOME CONSIDERATIONS.

In respect to the methods pursued in California, we may consider systems of prison labor as to the effect upon the prisoners themselves, and also from a pecuniary standpoint. Aside from any question of revenue, it is absolutely essential to the maintenance of discipline that the prisoners should be constantly employed. The majority of those who commit crime have no trade, have never been taught habits of industry, and have fallen into crime either because they could not obtain employment, or were unwilling to work. Reformation in men of this character can be effected only by

teaching them habits of industry, and supplying them in some measure with mechanical skill. When a prisoner is liberated, he should have some means of earning a livelihood. It is cheaper for the State to have trained him in such a way, than it is to allow him to relapse into crime, and cause the State to incur all the expenses of another criminal prosecution. If a prisoner had not committed the crime for which he is undergoing punishment, and was living an honest life, he would outside of prison walls be engaged in some branch of labor. By working for the State he does not augment the number of laborers. The only question is, shall he remain idle, or shall his labor be profitably employed? If he were kept in idleness, a criminal would be housed, clothed, and fed at the expense of the State whose laws he had broken, and compelled to give nothing in return. His condition would then be better than that of many a respectable citizen. To treat him in this manner would be to offer a bid for the commission of crime.

## SEC. 180. WAGES TO PRISONERS.

Should the prisoner receive any wages for the labor he has performed? Until quite recently it was the custom at San Quentin to give faithful prisoners a small stipend, never exceeding ten cents a day. This practice has been abolished, and at neither Folsom nor San Quentin do the prisoners now receive any money. Yet to secure the best results, it is necessary to reward in some mode those who have excelled. This is in part attained by the credit system, allowing a deduction of time for good behavior. Still, this is something that the prisoner cannot fully appreciate. To give him a little better food, or an additional supply of clothing, an extra allowance of coal oil or tobacco, is to reward him in a way that costs the State but a trifle, yet greatly encourages him. This system places all prisoners on an exact footing, and gives to each the opportunity of ameliorating his condition.

So far as the payment of money to prisoners is concerned, there are many conflicting considerations. On the one hand, is the fact that a prisoner who has staid a number of years in prison, who had no money when he entered, and has been able to earn none during his imprisonment, is poorly equipped to engage in an honest struggle for bread. He is branded wherever he goes as a felon. Those that knew him before his conviction have gone away or are dead. He is like a stranger in a strange land. He has no money with which to support himself, or to seek other localities for employment; and unavoidably, almost, he is again forced to commit crime. Nor is he the only one who suffers. Before his conviction, he may have been the bread-earner for a helpless wife and infant children. In giving way to anger or yielding to temptation, he may leave, as an effect of his offense, his family dependent on the charity of the world. These considerations, and many others that might be mentioned, would seem convincing in favor of his receiving something in money for his labor.

Still, on the other hand, he has put the State to a great deal of expense. It is difficult to estimate what it does cost the State, on an average, to lodge a man in prison, but the amount is quite large. The law says that his civil rights shall be suspended. To give him the results of his labor would make his condition as good as, if not better than, that of him who had not committed crime. Again, if he is allowed to have money, he may not wish to save it. He may gamble, or attempt to purchase contraband goods. Of course, vigilance can prevent his doing this, yet it must be increased vigilance. The money is of little use to him unless he can spend it. While the amount paid to one man may be small, yet in the aggregate it

will be great. For instance, if he should receive only \$3 per month, amount paid to 2,000 prisoners (and we have nearly that number in California) would be \$6,000 a month, or \$72,000 a year. Hence, the better way, all things considered, is to adopt the plan of grading the prisoners and giving to the deserving extra supplies.

It should be the aim of all prison authorities, while attempting to secure profitable results, to employ the prison labor in such branches as will interfere to the smallest possible extent with free labor. The mechanic who is a law-abiding citizen ought not to feel that his capacity for earning a livelihood is lessened by competition with prison labor. The prisoners should be employed in manufacturing goods not manufactured in this State to any great extent, and they should be sold at the same price that goods manufactured elsewhere will command. This has been the constant aim of the Directors in the management of the prisoners of California.

#### SEC. 181. SELF-SUPPORTING PRISON.

It may be asked why a prison should not be self-supporting? It may be said that a free laborer supports himself and has a surplus left, and that a prisoner should accomplish as much. An answer to this will also show how greatly exaggerated is the opinion of the effect that prison labor has upon the labor market. In the first place, a prisoner cannot, or will not, do as much labor as a free man. Some claim that he will not perform more than a third as much, and the most careful tests made in England place the average at not more than one half as much. Then, all the prisoners cannot be employed in profitable labor. Some must be used as cooks, and in various departments of unproductive labor. Some are engaged in making repairs. It is probable that any able-bodied prisoner who will work can earn a great deal more than what it costs to feed, clothe and guard him. But it should be remembered that nearly every prisoner must be trained before his labor will be of any value; then, when he has acquired skill, his term expires, and a new-comer takes his place, who also receives like training. The prisons are recruited, not from the hard-working, industrious mechanics, but from the idle and vicious; and it cannot be expected that much work can be obtained from one of the latter class.

To any further objection made to the employment of convicts, it may be finally answered that the law makes it mandatory. It requires \$200,000 a year to maintain the prison at San Quentin, and \$130,000 a year to maintain the prison at Folsom. It was estimated at the last Legislature that the San Quentin prison could earn \$70,000 a year, and the Folsom prison \$40,000 a year, and the appropriations were made accordingly. But, owing to many causes, these sums cannot be earned, and with the most careful management a deficiency is unavoidable. It would be better if the State would make an appropriation sufficient to cover all expenses, without any allowance for earnings, and have whatever profit was made paid into the State Treasury.

#### SEC. 182. QUESTION OF COST NOT ONLY ONE.

Yet the question of cost is not the only one involved in prison management. A prison is a place where a criminal should be punished, in order that he may himself suffer the consequences of his guilt, and that others with similar inclinations, may be restrained, from the fear of the punishment to follow. It should be all this, and should be more. It should be a place where a prisoner may be rescued from the course of evil, and given

all the training that will enable him to live the life of an honest man. Many who commit crime do so through depraved instincts that no training can eradicate. Reformation in these it may be foolish to expect. But few are aware of the large number that enter our prisons who are not really depraved, but weak and destitute of any clear ideas of right and wrong, who do not realize the full consequences of a crime. These can be saved from a criminal life, and made useful citizens. Any system of prison labor or prison discipline that fully accomplishes this is in the true sense of the word successful.

#### SEC. 183. SOME VIEWS OF THE COMMISSION.

So far as our duties as Commissioners of Penology are concerned it might be sufficient to confine our observations to the influence of labor upon the prisoners themselves, looking solely to the effect produced as regards discipline and reformation. But from the importance of this topic we may go a step farther and consider the question of prison labor not only as a penological question but also as one by which the interests of the whole State are affected.

First of all, we do not believe that it will be seriously contended by any one that prisoners should be kept in idleness. This would be ruinous to the prisoners and to prison discipline, and would in one sense place a premium on crime. But when we come to determine in what pursuits they shall be employed, we meet with innumerable difficulties. Unfortunately the idea that it is the prime object of a prison management to make the institution under its charge self-supporting, has so often been proclaimed and so widely believed that it is difficult to convince many that a State has higher aims than the coining of money from the sweat of law-breakers. Yet the consideration of pecuniary profit should not be ignored. The idea we mean to convey is that pecuniary profit should not be deemed the only object worthy of consideration.

Our Government is founded on the dignity of labor. It is a part of our national creed that the laborer should be protected in all his rights, and that the State should advance, so far as consistent with good government, the condition of the laboring classes. When a system of prison labor is manifestly destructive of free industry no argument is needed to show that a wrong is being done.

Happily in this State many of the perplexing questions connected with this subject are averted by the fact that we have an industry which under ordinarily favorable circumstances will give employment to all or nearly all the convicts at our larger prison, will make a handsome profit, will aid the farming interests of our State, and will not interfere to any appreciable extent with free labor. We refer to the manufacture of jute goods. By doubling the capacity of the present plant employment can be given to all who are physically able to work.

At Folsom, the question squarely presents itself to the Legislature to determine what course shall be pursued.

#### SEC. 184. SOME SUGGESTIONS.

We may say, in this connection, that we believe it to be entirely feasible to have the State manufacture all the articles required in the various State institutions. One of the strongest objections urged against convict labor is that it gives the person who deals with the prison an undue advantage

over his competitors. By having articles required in State institutions manufactured in the prisons, this objection becomes practically groundless. It probably will require legislation to enable this to be done, should the proposition meet with favor.

The building of roads and bridges presents another avenue for employment of convict labor. But there are some objections to this mode of employing convicts. It would not be free from interference with the labor. It would take the convicts away from the prison, and at night they would be insecurely guarded, thus rendering escapes more easy. It would not as greatly as other modes of labor affect the reformation of the prisoners.

It is the interest of the State to have its harbors in good condition. San Francisco is in need of a stone seawall. The material for this could be cut at Folsom, and transported to San Francisco. By this means, in time we would have one of the finest harbors in the world. It of course would take several years to complete this task. The proposition has been urged of having concrete blocks made at San Quentin for this purpose. But it seems to us that if the State is to engage in this work it ought to be done well. There are immense and inexhaustible granite beds at Folsom. The expense would not be much greater to supply natural stone. Possibly favorable rates in transportation could be secured, or barges could be built expressly for this purpose, with railroad tracks upon them, and the cargo could be run directly on board the barges at Sacramento or Oakland. This wall would be of immense advantage to the people of this State, and we respectfully call your attention to this mode of employing convict labor.

The water power that runs to waste at Folsom could be utilized. Probably, if it was once demonstrated that this water power could be advantageously used, manufactories would be attracted there which would redound to the benefit of the State in many ways. Then there is the proposition of supplying material for public buildings.

We call attention to these matters, because we believe they deserve your most careful consideration, and will require legislation to carry them into execution.

## CHAPTER XVI.

### CARE OF CRIMINAL INSANE.

- SEC. 185. In general.
- SEC. 186. Remarks of Dr. Shurtleff.
- SEC. 187. Remarks of Dr. Tyrrell.
- SEC. 188. State Asylum for Insane Criminals at Auburn, New York.
- SEC. 189. Remarks of Dr. MacDonald.
- SEC. 190. Same subject continued.
- SEC. 191. Letter of Dr. MacDonald to Commission.
- SEC. 192. Letter of Dr. Eagle to Commission.
- SEC. 193. Report of Prison Directors.

#### SEC. 185. IN GENERAL.

What should be done with those convicts who become insane in prison, is a question that deserves much consideration. Under the present law, the insane convict may be sent to one of the insane asylums. At San Quentin there are a number now, while not dangerous, yet are more or less demented. The prison is not the place for insane criminals, because proper treatment cannot be given to them, and from all we can learn there are many and serious objections to placing them in an insane asylum.

This matter is not a new one in this State.

#### SEC. 186. REMARKS OF DR. SHURTLEFF.

In the report to the Directors of the State Insane Asylum for 1873, Dr. Shurtleff said:

There have been, within the period of my superintendency, in all, forty-six patients transferred from San Quentin to Stockton. Among them were murderers, highway robbers, burglars, thieves, and the perpetrators of other atrocious crimes. Some of them, in their physical outlines, no less than by their vicious lives, illustrate a brutalized degeneracy reached only through a long course of ancestral debasement. They are generally familiar with all the low slang, mischievous acts, and common vices usually prevalent in the haunts of criminals. Mental disease does not deprive them of these bad attainments, nor wholly destroy their natural characteristics. It seldom changes them for the better, or renders their influence other than pernicious. The murderer becoming insane, is more disposed to homicidal violence than is the good, law-abiding citizen with the same mental affliction. So the insane thief is more likely to steal than the patient who, before his insanity, had respected the rights and property of others; and the burglar, unless stupid from dementia, or a purposeless maniac, is almost certain to contrive the means of picking locks, and of making his escape from the asylum. He is, also, very likely to teach others his troublesome art. In spite of the closest confinement, and the best security consistent with asylum discipline, 25 per cent of our convict patients have escaped. The influence of this class of patients upon others is incalculably bad in every respect.

#### SEC. 187. REMARKS OF DR. TYRRELL.

The President of the State Medical Society of California, Dr. G. G. Tyrrell, in his address before them in May, 1882, says:

From extracts which might be multiplied from the experiences of every physician in attendance upon an insane asylum, we can partially learn how wrong, how unjust, and

how unfit it is to send these criminals, made worse by reason of their insanity, to the State Insane Asylums. They cannot be separated from other insane patients, as asylums are not constructed for that purpose, and they cannot be locked up in rooms, as that is just what they are sent to the asylum to escape, because it is unjust, inhuman and would destroy every hope of recovery. The asylum has no machinery and should need none—such as is required for the safe-keeping of this class.

No proper place exists in our prison for the care and treatment of these insane criminals. It is not just or right to keep a noisy maniac within the wards of a prison hospital among cases of sickness where absolute quiet is required; neither ought the nineteenth century civilization permit the thrusting of a raving maniac within the wards of a prison hospital among cases of sickness where absolute quiet is required; neither ought the nineteenth century civilization permit the thrusting of a raving maniac within the walls of a dark and noisome dungeon, deprived of light and wholesome air, perhaps chained to its damp and reeking floor, to preserve from harm its other and more sane inmates. The only remedy presented to us to obviate this manifest and glaring wrong to our fellow beings, who, although insane, are not criminal, and to those who are both criminal and insane, is a separate and special provision for the care and custody of the criminal insane, and this in the erection by the State of a suitable asylum constituted and adapted to this special purpose, since the inmates intended for its occupancy, although insane, are still dangerous outlaws and criminals, retaining, for the most part, all their criminal characteristics and vicious proclivities. More especially is this required from the want of adequate room for the proper care of the ordinarily insane, our asylums now being filled far beyond their sanitary capacity.

It is the opinion of those who are interested in the welfare of the insane, and has been written upon the subject, that the preferable location for such an asylum would be within the precincts of our State Prison, and not in connection with hospitals or asylums for the ordinarily insane. At Folsom, within our prison grounds, is an admirable location for such an asylum. There is plenty of room, a genial climate, a generous soil that would afford plenty of occupation in cultivating and adorning it. Its construction might be accomplished at a minimum cost by utilizing prison labor—the material is right on the ground; and its medical management might safely be intrusted to the medical officer of the prison. Within its walls should be confined, for life, all those dangerous homicidal who are acquitted on the plea of insanity, and also all those who offer the same defense for other equally atrocious crimes. All those who become insane after their arrest and before their trial should also be committed to the asylum, as well as those who become mentally deranged after trial and conviction, or who are serving out their term of punishment. This would at once relieve our State Insane Asylums of this very undesirable class of patients, and of their overcrowded condition, and release our prisons from the necessity of keeping insane convicts locked in their cells or thrust into dungeons, to the disgrace of our civilization.

#### SEC. 188. STATE ASYLUM FOR INSANE CRIMINALS AT AUBURN, NEW YORK.

The only institution specially designed for the confinement of insane criminal convicts is, we believe, the State Asylum for Insane Convicts at Auburn, New York. The original structure for this asylum was commenced in 1857, and was designed to accommodate 80 patients. In 1873 an additional wing for the accommodation of 80 patients more was commenced. The asylum receives both male and female convicts, as also those charged with crime, but who escape conviction on the ground of insanity. In the report for the year ending in September, 1884, the Medical Superintendent states that since the asylum was opened in 1859, 718 patients—68 men and 33 women—have been admitted, and 564—538 men and 26 women—have been discharged.

#### SEC. 189. REMARKS OF DR. MACDONALD.

In the twenty-third annual report of this institution the Medical Superintendent, Charles F. MacDonald, M.D., describes the criminal insane, and from such description we extract the following:

From a somewhat extensive observation of several years, respectively, of the criminal and non-criminal insane, I am led to believe that the element of crime, when interwoven with insanity, exerts a modifying influence upon the mental manifestations of that disease, and that to this extent, in a large proportion of cases, the criminal insane, medically speaking, may be regarded as a distinct and separate class, the analogue of which is not found among the ordinary insane. They present certain characteristic mental peculiarities which experience in observing this class enables one to recognize as the index

stamp of crime, and although the line of demarkation may not always be apparent to the casual observer, its existence, as a rule, can be discovered and demonstrated, if time and facilities for careful observation be had.

In my experience with the criminal insane, now nearly five years, I have been struck with the frequency of cases in which there was an absence of expressed delusions, although the manner and conduct of the individual was clearly indicative of a delusional state. Comparing these individuals with their former selves, we find undoubted evidences of a departure from their normal mental state. They have become sullen, morose, and morbidly irritable. They rebel against the ordinary rules of discipline, and make unprovoked assaults upon those around them, without apparent motive, and without offering any explanation therefor. That they are suffering from impairment of bodily functions is shown by sleeplessness, loss of appetite, coated tongue, foul breath, constipation, a greasy condition of the skin, and a livid, puffy appearance of the extremities, indicating a relaxed state of the blood vessels. They are generally coherent in conversation, do not complain of being ill, nor apply for medical treatment. They frequently continue in the performance of their allotted tasks in prison for months, before the attention of those in daily contact with them is attracted to their mental disturbance. From this condition they either recover or gradually drift downward to complete dementia, with no outward exhibition of delirium or mental excitement to mark the course of their disease. The occurrence of acute, delirious mania, according to my observation, is exceptional among the criminal insane, melancholia and dementia, with an occasional case of subacute mania, being the predominant types of insanity observed here. A certain proportion of cases, and usually those of hardened criminals, are characterized, in their mental manifestations, by the most pronounced vicious tendencies, their insanity apparently expressing itself in a marked exaggeration of the depravity and vice displayed by them, prior to the onset of their disease. On the mental side this is substantially the only evidence of disease which these cases present. Physically, however, their condition is marked more or less by the signs of bodily impairment above referred to. Being known to the authorities as abandoned and depraved individuals, it is not surprising that their insanity is not recognized by casual observers when it expresses itself in the manner I have indicated.

#### SEC. 190. SAME SUBJECT CONTINUED.

We may readily admit such cases into the category of mental disease, without in any way countenancing the dogma that insanity and crime are convertible terms. The conduct of such cases, when first admitted to the asylum, is characterized by the most striking evidences of depravity. They are profane and obscene in language; tear and destroy clothing, bedding, and furniture; strike, steal, lie, and soil themselves and their surroundings, apparently from mere wantonness. They sleep badly, and display the resistance to the effects of sleep-producing remedies common to lunatics. They are generally alike indifferent to coercive measures and to comfort, and it is only by constant and persistent endeavor, firmly but kindly applied by those in immediate charge of them, that they can be traced into decent habits and deportment. From the foregoing, it might naturally be inferred that the successful management of the criminal insane would involve greater difficulties than are encountered in the care of the ordinary insane; and such was my belief in the early period of my experience with this class, but further observation and experience have served to convince me that, with facilities specially adapted to its needs, an asylum for the criminal insane can be conducted on the same general principles, and with as good results, except in the matter of cures, as are hospitals for the ordinary insane. Visitors passing through the wards of this asylum are struck by the marked absence of noise or disturbance of any kind, this being the usual condition night and day. They not unfrequently ask to be shown "the violent cases," and "those you have to keep tied up in their cells," or in "straight-jackets," and when informed that no mechanical restraint of any kind is used here, that we have no cells, that there is no "disturbed" ward, and that the patients they have seen are the worst cases we have, they are apt to look incredulous and doubting, apparently being unable to realize that criminal lunatics are controlled by kindly influences, and that order and quietude prevail among what they had supposed to be the most violent class of insane. The principal difficulties encountered in the management of this institution are the prevention of escapes and a propensity of certain homicidal patients to obtain and conceal articles for the purpose of using them as weapons of assault. To prevent these occurrences involves the exercise of constant care and vigilance. Cases of simulated insanity are obviously of much more frequent occurrence here than in general asylums. They, of course, are troublesome while they remain with us, but detection is not difficult, and is immediately followed by a return to prison. If it were the rule, and generally so understood in the prisons, that a convict detected in an attempt to feign insanity would forfeit the commutation of sentence allowed him for good conduct, it would, I believe, render such attempts of rare occurrence.

Insane criminals, particularly of the convict class, in their efforts to escape, frequently display a wonderful combination of shrewdness, cunning, and ingenuity. Patients of both classes, who have committed crimes against the person, are more dangerous but less inclined to escape than are those who have committed crimes against property.

## SEC. 191. LETTER OF DR. MACDONALD TO COMMISSION.

Carlos F. MacDonald, in a letter to the Commission, dated April 1886, says:

STATE ASYLUM FOR INSANE CRIMINALS,  
AUBURN, NEW YORK, April 19, 1886

Hon. ROBERT T. DEVLIN, *Sacramento City, California*:

DEAR SIR: I duly received your communication of March twenty-second, and was promptly answered the same but for my absence from home and an unusual amount of official business since my return.

Replying, seriatim, to your queries regarding the care of the criminal insane, I would say: The term "criminal insane," as used in this State, applies to two classes, namely, convicts who become insane while undergoing penal servitude, and persons who are charged with crime and acquitted, or not tried, on the ground of insanity, and confined upon the order of a Court. We have both classes in this asylum.

The criminal insane should be kept in an asylum entirely separate from the prison, the reason that insane persons need hospital care of a special kind, and such as they would not be likely to obtain at the hands of prison officials accustomed to dealing only with convicts, and by methods that would be quite inapplicable to the insane of any class.

It strikes me that the practice, which you say obtains in your State, "of sending convicts subsequently becoming insane from the State Prison to the asylum," must necessarily work great injustice to the non-criminal insane, who are thereby compelled to associate with criminals and felons. It must also result in disturbance of the order and discipline of your State asylums, and thus greatly embarrass the officers of those institutions.

In my judgment, asylums for insane criminals should always be separate and distinct in location, organization, and management, from both prisons and ordinary asylums, while buildings for this class should, in their general style of architecture and arrangement, resemble ordinary hospitals for the insane, some variations will be necessary to meet the special requirements of the criminal insane; but such buildings should in respect partake of the character of a prison, nor should they ever be located adjacent to a prison.

The opinions and views here expressed are based upon a personal experience of ten and ten years, respectively, in the care and management of the ordinary and criminal insane, together with a not inconsiderable study of the two classes, both at home and abroad. They are also in accord with the views of a large majority of asylum Superintendents, as expressed from time to time in their annual reports, and by resolutions adopted by the Association of Superintendents of American Institutions for the Insane.

I send you by express to-day a parcel of documents, embracing a nearly complete set of the reports of this asylum, a copy of our rules and regulations, and various blank forms in use here, etc.

I regret that the distance between us is so great as to prevent you from making a visit of observation here, which would afford you far more information than I could hope to convey through the medium of a hastily written letter.

Very respectfully yours,

CARLOS MACDONALD, M.D., Med. Supl.

## SEC. 192. LETTER OF DR. EAGLE TO COMMISSION.

Thos. B. Eagle, M.D., Resident Physician and Surgeon, in a letter to the Commission dated December 6, 1886, says:

MEDICAL DEPARTMENT CALIFORNIA STATE PRISON,  
SAN QUENTIN, December 6, 1886.

Hon. R. T. DEVLIN, *Secretary Penological Commission, Sacramento, California*:

SIR: In answer to your questions concerning the management of criminals, including the insane, I have the honor to submit the following:

First, should there be a separate institution for the care and custody of insane criminals? I am satisfied the criminal insane can have as good care and treatment in a properly conducted penitentiary as is possible to give them in either of the State Asylums, or that might be built for the purpose. The principal objection to confining the criminal insane in our State Asylums is that they are compelled to mingle more or less with ordinary insane patients, not of the criminal class.

If we had a properly built and conducted asylum connected with one of our State Prisons for the reception and care of those who had become insane since the commission of the crime charged, I am satisfied that our Criminal Court calendars would be materially reduced. For such emotional insanity the State Prison Asylum should be only home, and even if the patients were said to be curable, they should never be released unless responsible parties become sureties that strict surveillance should be maintained over them as long as they live.

What are the principal causes of insanity among prisoners? Prisoners, like all other human beings, have a composite organization—the physical or bodily and intellectual

mental, each of which acts and reacts on the other, so that any disarrangement of the one must inevitably affect the others. No prisoners, after they have endured confinement for a short period, are freed from some of the influences which predisposed to insanity many of those who enjoy the blessings of liberty. The evil consequences resulting from an excessive indulgence in stimulants, or from the king of evils, the use of opium and other narcotics, are in a great measure counteracted or neutralized by the enforced regimen to which prisoners are subjected in all penal institutions; and they do not suffer from the constant strain and anxiety which the exigencies of life impose on those who are plunged in all the toil and turmoil of business. But, on the other hand, the dull, ceaseless routine and monotony of convict life of those who have well developed muscular systems, such as the well developed muscular system of the hard-working blacksmith, soon shrinks and disappears under the influence of an idle and indolent existence. And in like manner the powers of the brain become enfeebled by disease, gradually producing a morbid condition, and the intellect becomes a total wreck. Here it is especially that the inequality of punishment is plainly shown. To the semi-civilized and uneducated a long imprisonment is nothing terrific or awe-inspiring; they can eat, sleep, drink, and be contented. But to the man of higher intelligence there is something appalling in that drear expanse of dull, never-varying existence which awaits him, isolated from all his fellow-men and debarred from all associations with congenial minds, and, more fearful still, the thoughts of that future which awaits him should he once more return to the world—an ex-convict at whom the finger of scorn is pointed. "On this side madness lies." And when the term of imprisonment is for life, what can be more agonizing than the mental torture endured by one who can see no refuge from this long protracted misery but death? There is no emotion which so completely overpowers the human intellect as despair; there is nothing to which the mind of man clings more eagerly and relinquishes with more reluctance than hope! Withdraw that, and then truly reason trembles on her throne. Hence it is reasonable to suppose that hopelessness is one of the chief factors in causing insanity among prisoners. If such be the case, it is evident that every means calculated to divert the mind of the prisoner from brooding over his misfortune and to encourage him to hope for a release from his sufferings, will be beneficial to his mental condition. For this reason, if for no other, it would seem advisable that certain changes in the management of penal institutions should be adopted as soon as legislative enactments will permit of them. Let prisoners once understand that the duration of their imprisonment will to a certain extent depend on their own conduct, and a motive will at once be supplied which will exert a powerful stimulus toward preserving both the bodily and mental health; the tasks assigned to them will be performed with more alacrity, and they will become zealous in the discharge of their respective duties. The system of "paroles," now in operation in some of the States, presents many features which recommend it strongly to all those who are interested in the question of prison reform; and there are many reasons for believing that such a plan, if adopted, would soon materially lessen the number of criminals, whilst at the same time it would effect a very great saving for the taxpayers of this State. In my opinion there is nothing which would exert a more beneficial influence over the mental condition of prisoners than such a system as that named above, and I earnestly hope that some such measures for the relief of worthy prisoners may be speedily adopted.

Very respectfully,

THOS. B. EAGLE,

Resident Physician and Surgeon, San Quentin Prison.

## SEC. 193. REPORT OF PRISON DIRECTORS.

In the last report of the State Board of Prison Directors special stress is laid on this point. Says the report:

Lastly, but most especially, we need an appropriation for a building for the criminal insane. There is at neither prison proper quarters for the care of these unfortunate wards of the State. This is particularly true of the older prison. As a rule, those who are disordered in mind are disordered in body also. Yet at San Quentin there are no better accommodations for these poor lunatics than a damp, unwholesome, dreary alley, into which the sunshine never comes, and in which exuberant health must soon decay. The law provides that such insane may be sent to either of the two lunatic asylums, but the Resident Physicians have regularly objected to receiving them. Their protests, we must admit, are reasonable. Setting aside the intractability of such patients and the great precautions that must be taken against their escape, it is unjust to the innocent insane that they should be forced to associate with those whose infirmity, as a rule, is the result of their own vices and ancestral debasement. Such an association, we understand, has a most disastrous effect upon the general inmates of the Stockton and Napa Asylums, and we cannot blame the Resident Physicians for endeavoring to limit it. The only remedy lies in the construction of proper quarters, at one or the other prison, where the criminal insane can be cared for somewhat after the manner of civilized and humane usages.

The suggestions here made should be carried into effect by the erection of separate suitable quarters, either at Folsom or San Quentin.

## CHAPTER XVII.

## THE COUNTY JAIL SYSTEM.

- SEC. 194. Little attention paid to subject.  
 SEC. 195. How used.  
 SEC. 196. Views of Mr. Wright.  
 SEC. 197. Remarks of Illinois Board of State Charities.  
 SEC. 198. Committee on prison labor.  
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 SEC. 201. District prisons.  
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 SEC. 204. Subject should receive attention

## SEC. 194. LITTLE ATTENTION PAID TO SUBJECT.

Generally throughout the United States the system of county jails has not received that attention which it deserves. These jails are used in the State for the detention of persons charged with crime and committed to trial, for the detention of persons committed in order to secure their attendance as witnesses in criminal cases, for the confinement of persons committed for contempt, or upon civil process, or by other authority of law, and for the confinement of persons sentenced to imprisonment thereupon a conviction for crime.

## SEC. 195. HOW USED.

The law provides that the jail must contain a sufficient number of rooms to allow all persons belonging to either one of the following classes to be confined separately and distinctly from persons belonging to either of the other classes:

1. Persons committed on criminal process and detained for trial.
2. Persons already convicted of crime and held under sentence.
3. Persons detained as witnesses, or held under civil process, or under an order imposing punishment for contempt.
4. Males separately from females.

And further:

Persons committed on criminal process and detained for trial, persons convicted under sentence, and persons committed upon civil process must not be kept or put in the same room, nor shall male and female prisoners (except husband and wife) be kept or put in the same room.

Yet, notwithstanding these provisions, the guilty and the innocent are congregated in the same building, and there is between them more or less communication. The most debased criminal, while awaiting trial, is confined in a jail along with some person detained as a witness.

## SEC. 196. VIEWS OF MR. WRIGHT.

A. O. Wright, Secretary of the Wisconsin State Board of Charities and Reform, says:

When prisoners are herded together without distinction of age or character, the jails become schools of crime and vice. The hardened offenders teach the young and comparatively innocent, or those arrested for the first time, lessons in the art of preying upon society and of breaking jail, or of otherwise escaping punishment. Here, in the long and weary hours of imprisonment, many a tale of past adventure in crime is rehearsed, many a plan is laid for future crime, many a jail friendship is made, which will hereafter ripen into comradeship in crime, and many a plan of escape is concocted. The young are taught that the world owes them a living, and that it is not crime, but being caught in it, which is to be dreaded.

Visiting a jail, you are liable to find mingled indiscriminately together, first, professional criminals awaiting trial for State Prison offenses; second, non-professionals, who have committed some crime under temptation, but who do not live by crime; third, innocent persons accused of crime; fourth, insane persons; fifth, idiots, frequently filthy in their habits; sixth, persons sentenced to jail for petty offenses; seventh, dirty tramps, sentenced as vagrants or given lodging in the jail as a tramp hotel; eighth, persons held as witnesses. In some counties, the only place for a person who is sick and without money or friends, is the jail. Boys are generally, and women sometimes, put in with men. All these persons are thrown together in enforced idleness. Their only labor in most jails is doing a few chores under the oversight of the Jailer. Their only recreation consists in handling a greasy pack of cards, in telling vile stories, or in looking at low pictures with which the cell walls are often decorated. They rarely have any considerable amount or variety of reading matter.

And again:

With few exceptions, prisoners sentenced to the county jail at hard labor generally spend their time in the exceedingly hard labor of telling stories and playing cards. The easiest way for a lazy fellow to pass the winter is to steal something of small value, have a spree upon the proceeds, and then go to jail, where he is supported in idleness at the expense of the county. It is obvious that this is very poor economy, as well as an encouragement to petty crime to that part of the community who do not care for the name of being in jail. Such people ought not to be supported in idleness at the expense of the honest and industrious part of the community; and even if their work is not of very much value in itself, it is well worth while to keep them at work for its moral effect on themselves and others. Tramps especially flock to those jails where they are fed in idleness and shun the jails where they are treated to the labor test.

## SEC. 197. REMARKS OF ILLINOIS BOARD OF STATE CHARITIES.

It is said by the Board of State Charities of Illinois:

It is this association of idleness which is the curse and condemnation of our present jail system. Every jail is a school of vice. More than a hundred such schools are maintained in Illinois at public expense.

## SEC. 198. COMMITTEE ON PRISON LABOR.

The Committee upon Prison Reform in the United States at the International Prison Congress at Newport, Rhode Island, said:

The system of county jails in the United States is a disgrace to our civilization. It is hopelessly bad, and must remain so, as long as it exists under its present form.

De Tocqueville, half a century ago, pronounced our county jails the worst prisons he had ever seen; and there has been little marked improvement since.

The moral atmosphere of these prisons is foul; no fouler exists. The effect of such promiscuous association is to increase the number of criminals, and to develop and intensify their criminality.

Thus the country has, in its county jails, about two thousand schools of vice, all supplied with expert and zealous professors.

Our county jails cannot be improved, but must be reconstructed, revolutionized.

And says the Board of State Charities of Ohio:



Ohio is supporting at public expense as base seminaries of crime as are to be found in any civilized community.

#### SEC. 199. REMARKS OF GENERAL BRINKERHOFF.

General R. Brinkerhoff, of Ohio, says:

In every jail of a dozen inmates there are at least two or three who have made crime a profession, and who have spent years in its practice, and are adepts in all its arts and appliances. To them nothing is more delightful than to communicate to others better than themselves, and the leisure and opportunity afforded them for this congenial work in the halls of our ordinary jails, they never fail to utilize to the utmost. So apt and entertaining are these teachers of crime that they rarely fail to interest and influence their scholars. These scholars are mostly young men, or boys, who have drifted into jail, not because they are specially bad, but because of evil associations, neglected training, or the exuberance of youthful spirits; they have been led into the commission of some offense, real or technical, against the law, resulting in their arrest and incarceration. A part of them, very likely, are not guilty at all, but like poor dog Tray they have been found in bad company, and have been arrested with their guilty associates. At any rate here they are in jail, and willing or unwilling they are pupils in a school of crime. Every observant Jailer knows with what devilish skill the professors of this school ply their vocation. Hour after hour they beguile the weariness of enforced confinement with marvelous tales of successful crime, and the methods by which escape has been accomplished. If attention fails, games of chance, interspersed with obscene jokes and ribald songs, serve to amuse and while away the time. In this way the moral atmosphere of a jail is made so foul that the stamina of a saint is scarcely strong enough to resist. Let a prisoner attempt to be decent and to resist the contaminating influences brought to bear upon him, especially in a large jail, and he will find that, so far as personal comfort is concerned, he might as well be in a den of wild beasts.

#### SEC. 200. CONFERENCE OF BOARDS OF CHARITIES.

At a Conference of the State Boards of Charities for the States of Illinois, Wisconsin, and Michigan, at Chicago, in 1872, this declaration was adopted:

A minute and careful examination of the jails of Illinois, Wisconsin, and Michigan, by kindred commissions, specially appointed for this purpose, reveals the fact that, as proper plans of punishment, they fail to accomplish the object of their creation. They are for the most part defective in a sanitary point of view. Many of them are insecure. They are frequently so constructed as to compel the promiscuous association of the young and the old, the guilty and the innocent, the hardened villain and the novice in crime, and in some cases even of the sexes. In none of them is there provision for the employment of the imprisoned inmates, and there are few in which any attempt is made either at their moral or intellectual culture. In the aggregate, they cost large sums of money for their construction, and are a great annual expense to the community, without adequate return for this expenditure. The finest and most costly of them all, however, in architectural construction, exerts as little reformatory effect as the poorest. Their condemnation may be pronounced in a single sentence—they are an absurd attempt to cure crime, the offspring of idleness, by making idleness compulsory.

#### SEC. 201. DISTRICT PRISONS.

It would seem better if district prisons were established at different points in the State, for the confinement of those who had been convicted of crime, while the present jails or lock-ups might be used as houses of detention for those awaiting trial and unconvicted of any crime. In these district prisons the inmates might be compelled to pursue some line of industry, although it must be confessed that the short terms for which the majority of them are sentenced would interfere greatly with the successful prosecution of any particular trade.

#### SEC. 202. SEPARATION OF PRISONERS.

The evils now existing are due to the fact that the criminal and non-criminal associate with each other. Such association cannot have a bene-

ficial effect. The only feasible way of improving the system at the present time is, by requiring the complete separation of all prisoners confined. There are three jails in the United States operated on this plan of absolute separation, situated respectively at Boston, Washington, D. C., and Mansfield, Ohio.

Concerning the one in Boston, Sheriff Clark says:

I would expect hell upon earth here if prisoners were allowed to be loose, and associate within the jail, and friends allowed to visit freely, and bring what they pleased. The association of criminals, or of persons held charged with crime, is an open temptation for the committal of more crime. "Evil communications corrupt good manners." It would seem to me to be a positive duty to keep all persons held as criminals, or for trial on criminal charge, from opportunity to form each others' acquaintance, so far as possible, while in jail. I consider this jail to be a sort of moral as well as physical hospital; and I do not know of a single instance of any prisoner, who came in sound and well, injured in mental or bodily health by reason of detention here.

And Sheriff Gates, of Mansfield, says:

Separation is better every way, physically and morally. It insures greater cleanliness and better habits, and consequently better health. If the prisoner is a young man, or is arrested for some trifling offense, or on suspicion merely, separation secures him against the contamination of old offenders, and if released without conviction (which occurs in a majority of cases) he goes out free, in a large degree, from the odium of prison associates. If the prisoner is an old offender, he certainly ought not to have an opportunity to contaminate the younger inmates, and separation prevents that. So in many other ways I could name, separation is an advantage. In short, in my judgment, separation is better for the prisoner, better for his keepers, better for the public, and better every way. I am sure nothing could induce me voluntarily to return to the old system.

#### SEC. 203. VIEWS OF GENERAL BRINKERHOFF ON SEPARATION.

General Brinkerhoff, of Ohio, who has given much attention to these subjects, and whose judgment is of value, after describing this system of separation, says, with reference to it:

With a remedy at hand so clearly adequate for the suppression of the evil, it only remains to apply it. It may cost a trifle more in the ordinary running expenses of a jail, and it will cost something more to construct a jail fitted for the separate confinement of prisoners, but the gains in every other direction will be so enormous that no good citizen should hesitate for an instant in insisting upon the separate confinement of all prisoners in county jails and city prisons.

Jails should be solely places of detention for prisoners awaiting trial. Condemned prisoners should be sent to district workhouses, or to a penitentiary, as the offenses committed may determine. Then, with our penitentiaries graded upon the Crofton system of progressive classification, and the whole crowned with police supervision of prisoners after discharge, we shall begin to deal with our criminal classes upon humane and Christian principles, and shall make them better instead of worse by our treatment.

#### SEC. 204. SUBJECT SHOULD RECEIVE ATTENTION.

We believe that this subject should receive deep and earnest attention, because the fact cannot be denied that many of our county jails are simply schools of crime. We cannot hope to accomplish all in a day. Yet, we should know wherein any branch of our penal system is deficient or may be improved.

## CHAPTER XVIII.

## THE BOARDING-OUT SYSTEM.

- SEC. 205. Boarding-out system.
- SEC. 206. Statement by the Association for the Advancement of Boarding Out.
- SEC. 207. Paper by Mr. Holmes.
- SEC. 208. The treatment of the children of the State.
- SEC. 209. The contaminating influence of the workhouse.
- SEC. 210. Remedies sought.
- SEC. 211. The establishment of separate and distinct schools.
- SEC. 212. Advantages of boarding-out system.
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- SEC. 217. Observations of Miss Hill.
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- SEC. 219. Some experience of practical operation.
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## SEC. 205. BOARDING-OUT SYSTEM.

A system of boarding out children seems to meet with the best results in those countries where such system prevails. We have not been able, of course, to examine the practical operation of this system, nor do we know that in our comparatively sparsely populated State such a system could be advantageously carried on. Miss Florence Davenport Hill of England, kindly forwarded to our Secretary, pamphlets explaining this system, and we deem it proper in this place to call attention to its salient features. Whether considered practicable in this country or not, an account of the practical workings will be interesting information.

## SEC. 206. STATEMENT BY ASSOCIATION FOR THE ADVANCEMENT OF BOARDING OUT.

The Association for the Advancement of Boarding Out, in England, has issued several leaflets, in which this system is explained and commented upon.

In one of these, issued in June, 1886, it is said:

The orders of the Local Government Board of November, 1870, conceding to Poor Law Guardians authority to board out beyond the limits of their unions certain classes of children, under the care of voluntary committees, certified for this purpose by the department, called a large number of such committees into existence, amounting at the present time to one hundred and five.\* These were formed upon the model of numerous com-

\*The children eligible for boarding out under this order must be between the ages of 2 and 10, orphans or deserted, or whose parents are under sentence of penal servitude, or suffering permanently from mental disease, or out of England.

mittees, already in operation, for aiding Boards of Guardians in placing suitable children in cottages within the limits of their own unions, a form of boarding out (developed from out-relief) which had, during the previous ten or fifteen years, sprung up in various parts of the country. An order for its regulation was issued in 1877 by the Local Government Board, of which many Boards of Guardians have since availed themselves, thus further increasing the large number of individual organizations conducting boarding out, without any appointed means for exchanging information or otherwise benefiting by each other's experience. As they proceeded in their work, and the children under their charge increased, it became desirable to have some center of communication between these bodies, hitherto entirely isolated.

The system, meanwhile, was gaining favor with those who were able to watch its operation; but to the outside public—although, as ratepayers, deeply interested in a plan so little costly and largely successful—it remained almost unknown, and an organization of influence and experience had become necessary to support its claims for general adoption. Means for conference among the workers, and for combined action when occasion arises, also showed itself to be a serious want. It was to afford this manifold aid that the Boarding-Out Association was formed. Lord Cranbrook is its President, and among its Vice-Presidents are Cardinal Manning, several members of both Houses of Parliament, including Mr. Goschen, during whose Presidency of the Local Government Board, in 1870, was issued the boarding out order of that year; and many noblemen, ladies, and gentlemen, engaged in this or kindred work.

The legislative and administrative duties of the association are discharged by a council, over which Mr. F. D. Mocatta presides, and an executive committee, of which Mr. Hardcastle, member of the Board of Guardians for St. George's, Hanover Square, is Chairman. Miss Hall, Eastbourne, and Miss Akers, Hayes Common, Kent, are the honorary Secretaries of the association. Already the subjects demanding its attention make their duties onerous; and as its work extends, an office in London, and a paid Secretary, will be indispensable. An annual subscription of 2s. 6d. and upwards constitutes membership, and may be paid to either of the honorable Secretaries.

The association desires to become a center of information on all matters relating to boarding out, whether of pauper children or others to whom the system is applicable. For this purpose it invites the coöperation of those voluntary institutions and societies which place their wards in families. Among these may be mentioned the Foundling Hospital (which boards out its children until they are five years old), the Post Office Orphan Homes Institution, the Nassau Senior Memorial Association, the Waifs and Strays Society, the Dublin Protestant Orphan Society, and similar organizations, both Roman Catholic and Protestant, throughout Ireland, the Main Memorial Home (lately removed from Great Coram Street to Burton Crescent), etc. It seeks, in fact, to act with all who recognize the family as affording the best means for the up-bringing of children, and while gathering from them the results of their experience, to diffuse this throughout the land, in the firm conviction that the more thoroughly the boarding out system is understood the more extended will be its adoption.

## PUBLICATIONS RECEIVED.

*Fifty-second Annual Report of the Protestant Orphan Society for the County of Cork, 1886.*

Number of orphans on the books January 1, 1886, 150. Total number received since the foundation of the society, 1,440.

The children under the care of this society are boarded out until old enough to be apprenticed or trained for service, which is done at the cost of the society, and under its supervision.

*Fifteenth Annual Report of the Post Office Orphan Homes Institution, 1885.*

The homes are established "for the purpose of boarding, clothing, and educating the orphans of sorters, letter carriers, and other members of the minor establishments of the Post Office, either in London or the Provinces, who have been subscribers to the institute. Applicants are admitted between the ages of 5 and 12 years, according to priority of application, and either placed at suburban and provincial schools or as boarders with the carefully selected foster parents, who are under the supervision of the committee. The great expense of maintaining an establishment is thus altogether avoided. Boys are maintained until 14, and girls till they are 15 years of age. Girls are instructed in domestic duties, and, on leaving the homes, suitable situations are obtained for them. Provision is also made for children under the prescribed age. All children are placed under the care of persons professing the same religion as the parents. It is regretted that so few of the Postmasters of our provincial towns take any active interest in this institution, as it is not the intention of its officers that the benefits should be confined to the metropolis. Communications on this subject from responsible officers are cordially invited, and will be carefully considered.

One hundred and eighteen children were under the care of the institution during 1885, chiefly located in an area of some twenty miles round London.

*Thirteenth Annual Report of the Certified Voluntary Boarding Out Committee, established in the King's Norton Union, Birmingham.*

On the first of January, 1886, the committee had 103 boys and 93 girls, Protestants, Roman Catholics, and 3 Jewesses, under its care, from the several unions of Birmingham,

Whitechapel, Aston, St. Pancras, Kidderminster, and Bethnal Green, and 6 supported by private subscriptions. The average annual expenditure for each child during 1885 was £10 18s. 3d.

*Second Annual Report of the Certified Boarding-Out Committee for Plymouth, Devonport, and Stonehouse.*

The committee, formed in 1883, has 25 children under its care, boarded out in Devonshire and Cornwall. The monthly reports of the visiting ladies show that all are doing well, and the mutual affection springing up between foster parents and children is very gratifying. In some cases the children have been visited by relations of their own, anxious to see if they were well cared for, and these have all expressed satisfaction in finding them happy and prized in their new homes. The annual average expenditure upon each child is about £10 3s. 8d.

SEC. 207. PAPER OF MR. HOLMES.

Edward M. Holmes, LL.B., Rector of Marsh Gibbon, Bucks, and Rural Dean, read at the Annual Congress of the National Association for the Promotion of Social Science, held at Birmingham, England, in 1884, a paper entitled "Boarding Out, an Aid in the Repression of Crime." He says:

"The child is father to the man." Its success or failure on reaching manhood depends upon its bringing up. There are exceptions, but such is the rule. May I not assume that, in the words of the poet—

"'Tis granted, and no plainer truth appears;  
Our most important are our earliest years—  
The mind impressible and soft, with ease  
Imbibes and copies what she hears and sees,  
And thro' life's labyrinth holds fast the clue  
That Education gives her, false or true?"

In our generation the State has given the most practical proof of its desire to act upon this principle. Whereas in 1846 the first government grant for the education of the people amounted to £30,000, that grant in 1883, reached, in round numbers, the sum of £4,000,000.

It is necessary that this large sum be well laid out. To that end, the instruction given must be addressed to the heart as well as to the head. It is not enough to teach a child to read, and to write, and to sum; it must be taught also its duty to God, and to its neighbor. Whether this higher part of instruction can be effectively given in our board schools under present regulations is a subject on which each of us has no doubt his own opinion. But, furthermore, be the instruction in any school ever so good, there is still risk of failure. We are all born with tendencies to evil. If we do not the right we are taught, our last state will be worse than the first. Education, therefore, which is worthy of the name, must embrace training as well as teaching. The promise is that if we "train up a child in the way he should go, when he is old he will not depart from it."

And, once more, for successful training, it surely should be given in a wholesome atmosphere.

SEC. 208. THE TREATMENT OF "THE CHILDREN OF THE STATE."

Now we are asked to think of the application of these principles to the bringing up of "the children of the State." That term embraces all orphan and deserted children left in a destitute condition. The State is called upon to stand towards them *in loco parentis*. How has the State been meeting the call? That first education grant of £30,000 was made chiefly on their behalf. It was voted for the bringing up of children in our workhouses, the permanent portion of whom consisted of these "children of the State." But what an atmosphere in which to be placed! It has improved, doubtless, recently; but we have clear evidence of its baneful nature some years back.

SEC. 209. THE CONTAMINATING INFLUENCE OF THE WORKHOUSE.

It was then a pit of corruption. Mr. Tufnell, in one of his reports to the Committee of Council, about the year 1860, gives the following account of a workhouse school by the schoolmaster; premising that it was one of the ordinary workhouses in the south of England—that there was nothing unusual in the character of the district or the internal arrangements of the house, nor any indication that the case was in any way exceptional. "The boys," he said, "had for years formed habits of lying, stealing, and destroying prop-

erty, and their morals were not merely neglected, but actually corrupted by those who should have fitted them for virtuous and respectable living. \* \* \* They were in the habit of using the vilest language imaginable to their teacher, when reprimanded by him." And with regard to the girls, Miss Twining, in giving evidence before the Education Commissioners about the same time, remarked that they were taught household work necessarily in communication with the adults, and learnt the care and management of children in company with their unmarried mothers. "One cannot imagine a more fatal risk for these girls, just going out into the world, friendless and without protection, than to see constantly before them these women with their babies; the workhouse seemed their recognized home; they had, mostly, nothing to do but to sit and nurse their babies by a good fire and to gossip with each other. There was no pretense of its being a place of penance or hardship. Why should not these girls go and do likewise? and so, of course, they did, and a constant supply was kept up." A good schoolmistress, who was asked why she seemed so depressed and spiritless about her work, in one of these schools, replied, "Be-cause she felt that she was training up the girls for a life of vice and depravity; that it was impossible under existing circumstances that it could be otherwise; one after another went out to carry on the lessons learnt from the adults, and returned, like them, ruined and degraded, to be a life-long pauper." No wonder that such evidence as this compelled the Education Commissioners of that day to report "that pauperism was hereditary, and that the children born and bred as members of that class furnish the great mass of the pauper and criminal population; that the best prospect of a permanent diminution of pauper and crime, was to be found in the proper education of such children;" but, "that the workhouse schools were generally so managed that the children in them learned from infancy to regard the workhouses as their homes, and associated with grown-up paupers whose influence destroyed their moral character, and prevented the growth of a spirit of independence."

SEC. 210. REMEDIES SOUGHT.

The separation of the children from the adults in our workhouses was thus proved to be imperative for the repression of crime.

SEC. 211. THE ESTABLISHMENT OF "SEPARATE" AND "DISTRICT" SCHOOLS.

To accomplish this object they were placed in "separate" or "district" schools; in "separate" schools, where the union was large enough to fill such a school with its own children; in "district" schools where the children of two or more smaller unions were placed together. And let all credit be given to those who, against great opposition, carried out this plan, for much evil was thus repressed. The children in these schools, are for the most part, most carefully superintended, and the boys are instructed in various trades; being thus put in the way of earning an honest living for themselves when grown up. Above all, they are thus separated from the contamination to which they had been subjected while mixed up with the adults in the workhouses.

But, as time went on, this plan of separate and district schools was found to have its own grave defects. The crowding together of such large numbers of children in one building has acted most injuriously on their health. It is very hard to prevent the spread of infectious diseases, once introduced. And there is still, under this system, a considerable amount of moral contamination. The children so brought together are made up of different classes. There are the orphan and deserted children. These being under good influences from their earliest years, are likely to repay well the care bestowed upon them. But they have as companions in these schools the "casual" children of the workhouses to which they belonged. These latter arrive often fresh from the haunts of sin in which their wretched parents live; and when they have been, it may be, a little improved by the discipline of their new position, they are liable at any moment to be withdrawn again. So this latter class comes and goes, introducing and reintroducing the moral poison with which it is tainted.\* And, once more, there can be little individualization in such large gatherings of children; little or no room for the fostering of affection between them and those over them; and what is the life of a child without love!

Hence the adoption of "Certified Cottage Homes," consisting usually of a cluster of cottages built together, so as to form, in the aggregate, a little village. In each cottage some

\* One reason given for upholding district schools is that the "casuals" may there be influenced for good while in companionship with the orphan and deserted children, who form the permanent residents. Such a plea would be considered a strange one for retaining boys, who are black sheep, in our public schools.

In reply to the question, "What is to be done with the 'casuals' if the system of 'boarding-out' absorbs all the other children?" it may be answered—

1. That orphan and deserted children call for our first consideration.
2. That the reclaiming of "casual" children may still be attempted by placing them out by themselves, under strict supervision, in small numbers, in some form of "certified homes."
3. That the present power of vicious parents of claiming back their children at will should be checked.

ten to forty children are lodged, under the care of a master or matron, the girls being trained in household work, and the boys as in district schools, being taught some useful trade. These "homes" are carried on by some unions under Government sanction, in lieu of the above named system of "separate" or "district" schools. Sometimes they are due to the exercise of voluntary effort.\* The bringing together of children in the overwhelming numbers in which they are massed in district schools is thus avoided. But to quote the words of Sir Charles Trevelyan, though "these 'cottage homes' come somewhat nearer to the real thing, they are artificial still; they lack genuineness; they are artificial life manufactured, and made to order without the family."

So, at length, the plan of "boarding out" has gradually come to be viewed in the country with increasing favor. It consists simply in the placing out of "eligible" children in *genuine* cottage homes, to the number of four at the most in any one family. As a rule, it is found in practice to be best to place but one or two under the care of the same foster parents.

### SEC. 212. ITS ADVANTAGES OVER THE FORMER METHODS.

The various objections raised against the other plans adopted have all thus been met. The evil effects of necessity incident to the herding of children in great numbers, as in the district schools, can find no place in "boarding out," where at the most four children can be placed together.

There can be no contamination from the mixing of orphan and deserted children with the "casuals," or "ins and outs," belonging to the same workhouse, for orphan and deserted children are alone held to be eligible for "boarding out," and, thirdly, instead of the artificial article, there is the genuine home.

This plan of boarding out has been tried in England in isolated cases for many years. It was carried out by some unions, within their own boundaries, before the year 1870, but it was increasingly felt that for its thorough success the boarding out of children at greater distances was advisable, to remove them the more effectually from the pauper taint; and hence the appeal in that year to the Local Government Board for this permission. That appeal was made by a committee of ladies. While men had been *arguing* about the best method of dealing with these children of the State, women had been *feeling* what it should be. On some questions woman's *instinct* is a surer guide to a right solution than any abstract reasoning of the stronger sex. And here is one. Women rear our children in their early years, and they know that love lies at the root of all success in the process, and that family love is only to be found in a real home. The result of this memorial was the issuing by the Local Government Board of the order of November 25, 1870, which gave permission to a certain scheduled list of our larger unions and parishes to board out their orphan and deserted children, beyond their own limits, under the care of local committees made up in part at least of ladies of the localities chosen.

Since that date the movement has been gradually spreading; but it requires to be better known and more generally taken up. My concern, during the remaining time left me in the reading of this paper, is to advocate its more general adoption as one of the best methods for the repression of crime, and to make one or two suggestions for its more effective working.

And, first, let there be no doubt about the finding of suitable homes.

Miss Joanne M. Hill—whose name is a household word, not only in Birmingham, but throughout the country, for her labors in this cause—in a "Plea" lately published by her for the extension of the system, declares that "it has been found everywhere that homes, in every way suitable, are to be obtained if a little trouble be taken and under certain conditions. Therefore, when a boarding-out committee has been in existence for a year or two, it can make a choice among the homes at its command, for each child it undertakes, instead of having to make choice among the children to fill up each home that offers."

In a report dated October, 1883, Miss Preusser, the lady Superintendent of the Boarding Out Committee of Windermere and Troutbeck, whose name is also widely known in connection with this system, a list of eleven committees is given as "ready to receive children, but not fortunate enough to obtain them." And one lady writes that "she has lost any desire she ever had to work with Government officials," so vain had been her attempts to obtain children from the London unions.

The system of "boarding out" has been found to be the best for obtaining children from the London unions.

The system of "boarding out" has been at work for some years in our Australian Colony of Victoria, from a conviction that it is the best mode of bringing up not only its orphan and deserted children, but also many of those whom we are in the habit of placing in reformatory or industrial schools from having already advanced some distance on the downward path. The latest return of the Government Secretary, dated 1883, contains in an appendix extracts from the reports of the local committees of ladies, which teem with statements of the following sort: "We desire to express our pleasure at observing the mutual affection and interest existing in almost all cases between foster parents and children." \* \* \* "It is gratifying to witness the mutual affection which exists between the

\*As in the case of the Princess Mary's Village Home for Girls, containing about 160 children in families of 10; and Dr. Barnardo's Ilford Home in Essex, designed for 30 cottages, to contain 20 girls each.

foster parents and children; the interest and attention of the former toward the objects of their care is most satisfactory." \* \* \* "Great attachment seems to exist between the foster parents and children. Two boys have had typhoid fever, one a very bad case, and they have been as well cared for and as tenderly nursed as if they had been their own children." \* \* \* "The tie of affection existing between the foster parents and their children is particularly striking. Where, in some instances, foster parents' homes have been disapproved of, on the plea of their being too poor and not comfortable, these foster parents, rather than be deprived of the children, would gladly keep them free of any paying." \* \* \* "It is a pleasing feature to note the continued love and confidence existing between the children and their foster parents after they have left their homes and gone into the world."

Let it not be said, then, that there are no true homes to be found for the orphan of our land. There is a store of human affection seeking for a vent in the mother-land as surely as in her daughter colonies. There is a sense of loneliness in many a cottage when the family nest has become empty by the flight of the birds which in due course have gone forth to make nests of their own. There are some family nests which have remained empty from the first. There is many an unmarried woman in whose heart the *motherly* feeling craves for exercise. I may on this point be allowed to quote my own experience. Having lately adopted the plan of "boarding out" in my own little country village, our local committee placed a young child in the charge of an unmarried woman, who seemed to think she would like to try the experiment. It had not been under her care a month when symptoms of lung disease became apparent. I suggested to her that the child might at once be changed for another before this little girl should have become a confirmed invalid on her hands. "What," said she, looking up into my face with surprise, "let Daisy go back to die in a workhouse? No indeed. God has given her to me as my child: and whatever the result of her illness, I will try to take care of her now."

As to the success of such a system, as an aid in the repression of crime, can there be a reasonable doubt?

### SEC. 213. ITS WORKING IN SCOTLAND.

In Scotland it has had the test of long experience. The plan has been carried out in a partial manner from time immemorial, and in a more systematic way for over forty years.

years. Amongst the many testimonies of its successful working there in this respect, as given by the officers themselves, who are engaged in carrying it out, one or two may be quoted. Mr. James Craig of St. Cuthbert's Parish, Edinburgh, writes: "With us and with the other larger parishes in Scotland, it has long ago ceased to be a trial or experiment; it is one of the best and most useful parts of our poor-law administration." And in answer to the question: "What becomes of 'boarded-out' children, when grown up?" Mr. Dempster, the Inspector of the City Parish of Glasgow, writes: "In after life they generally succeed as well as other people. One young man has now a warehouse and prosperous business of his own in a suburban town. Another employs a large number of workers in a carpet factory of his own; others are warehousemen, clerks, tradesmen, farm servants, miners, and many of the girls are respectably married and living in comfort. And some of them have in turn become foster parents, and are doing for others what was formerly done for themselves."

### SEC. 214. ITS WORKING IN IRELAND.

The same testimony comes from various parts of Ireland. The neighborhood of Cork has earned for itself of late years a notoriety of an unenviable sort; it is the more satisfactory to quote the following statement which reaches us from the union of Cork. Its boarding-out committee report that since 1862, when the Irish boarding-out Act was put into operation, "up to the present time (1883) 650 children have been removed from the workhouse, and boarded out in several districts named; of this number, 209 are at present boarded out, 417 have been adopted by their foster parents, and are going on well, 20 have died, and 4 have returned to the workhouse."

## SEC. 215. ITS WORKING IN ENGLAND.

In this country the system has as yet been taken up, too, partially, and has been at work for too short a period to make it feasible to quote many figures\* in proof of its success in the repression of crime; but it can be asserted, without fear of contradiction, that all who have been induced to try the plan are convinced that it will have this effect. And one or two authentic statements of its tendency in this way will speak for themselves.

A girl, A. B., (for obvious reasons names are suppressed), was boarded out at eight years of age with a well-to-do workman. At that time her mother was a convict for highway robbery with violence, her father was also a convict, and her mother's husband was in gaol for sheep stealing. Thus she came under the definition of a "deserted child." A

\*The Rev. W. P. Trevelyan has for several years received "children of the state" from the union of St. George's, Hanover Square, London, for boarding out in the Parish of St. P.

few months after this girl was boarded out, the mother wrote from her prison to the master of the workhouse, commenting in strong terms on what she called the cruelty of taking the child away from the workhouse without her leave! On the death of her foster parent this girl inherited a sum of money from him. The relatives, by a wicked cheat, found out her address. They thus got hold of her, now 14 years of age and in service, they being themselves out of gaol on ticket-of-leave. They kept her with them for a short time, but she was glad enough to leave them when traced by a lady visitor of the local committee. Once more at 16, in a fit of temper, while again in service, she ran away to them. Mercifully, before harm was done, they had fairly sickened her with their evil ways. She came back to her true friends of her own accord, and now for more than two years past has behaved thoroughly well in service. Meanwhile her only brother, who was boarded out, has become a convict.

Again, C. D. was the youngest of a family of three, whose mother was undergoing a sentence of penal servitude, when she was boarded out as a little thing of 3 years of age. This mother also remonstrated from her prison at the removal of her child from the workhouse. The Guardians, though not recalling her, decided thereupon not to board out the two elder children. By the time the mother had earned her ticket-of-leave the eldest son was a young thief, and the second, whom she took out of the workhouse, was soon sentenced to a reformatory. The little girl, now aged 14, is going on well in service.

Once more, E. F. is a lad whose father is a thief. He saw his brother rob their dying mother. It was his fortunate lot to be boarded out, and he is now 14 years of age and behaving well.

I speak to some present who can do something to forward a work which bears such fruit. What words can picture the contrast between a little child, an orphan, or deserted by its wicked parents, doomed to be one among 1,000 or 1,500 others in a great district school, with all its admirable arrangements, and such another placed in the humble cottage home under the care of a woman with a kindly heart? Not long ago such a poor motherless little one was placed in the arms of a loving woman, and the first lesson she had to teach it was *how to kiss her!*

We read in the life of James Hinton, the aurist, that he often mourned over the rarity of the adoption of these little motherless ones, who might thus be saved from the loneliness and contamination of the workhouse, and know the good influences of a Christian home. He once wrote a letter to the wife of an intimate friend, who, having no children of her own, he hoped might be persuaded to adopt some poor little orphan child. This was part of it: "Does it not make our hearts bleed when we think of those poor infants who are born not so much into any decent earth, but into a hell worse than was ever painted? When we think of the poor little girl with capacities of heaven destined to become a thing below humanity? Mothers are happy, but they know not the happiness, in being mothers, of preventing that. Do you never think of the tiny fingers which are being stretched out in vain for bosoms that the cold earth covers, or that shame has turned to stone? Oh! amid the merry laughter that rings like a mockery in your ears, does there not linger sometimes the long wail of a starving babe? It is not yet out of my ears, I know; and I do not wish it should. The things that are done here are too dreadful to be thought of; much too dreadful to be forgotten. Does there not, every now and then, intrude between you and that baby face, which haunts your eyes, a long procession of baby faces, streaming—the happiest only of them—to the grave?"

"Children not so much born, as *damned* into the world."—*South.*

## SEC. 216. SUGGESTIONS FOR ITS BETTER WORKING.

In conclusion, let me state that for the better working of this system of "boarding out" there seem to be two matters at least which call for further consideration on the part of the State.

Calverton, Bucks, and in some of the adjoining parishes. The following statistics, furnished by the committee of ladies having charge of these children, speak for themselves. The total number received to present date.....

Now under care of foster parents.....

Doing well in domestic service.....

Married to a mechanic earning good wages.....

Sent out to Canada.....

(Of these two are married there, the other three are doing well in service.)

Of the whole number, there were boys.....

(One of these is now a gardener, one is a well-to-do mechanic, one is on a man-of-war, and the fourth is in the band of the Oxfordshire Light Infantry.)

There have died.....

And there have been returned to the union.....

Total, as above.....

Of these, two were returned to the union on account of bad health, of whom one has since become an imbecile; the third turned out unmanageable.

Not one of the whole number has been lost sight of; interesting letters are received from those sent out to Canada.

(1.) First, a more thorough system of supervision. Though there are thousands of homes where these "children of the state" would be brought up in a truly loving and Christian way, still neglect may of course sometimes creep in. A committee, consisting in part at least of ladies, must always be formed in any locality before children can be boarded out beyond the union limits; and that is surely the wiser plan than to settle them in the neighborhood of the place to which they have originally belonged.\* This local committee may in the course of time grow careless in the work it has undertaken. There is therefore the need of some higher authority to look after this. In issuing the order of twenty-fifth November, 1870, the Local Government Board drew attention to the fact that "no provision was made in the order for the inspection of the children by any official person other than the members of the committee themselves." But the Board at the same time held out the expectation that such provision would be made when experience had shown what form it might be best for it to take. The time for fulfilling that promise would seem to have now arrived. Such at least is the opinion of Lord Cranbrook, better known still perhaps as Mr. Gathorne Hardy, himself formerly President of the Local Government Board, as expressed by him in an able article on the subject of "boarding out," which appeared in the last December number of *The National Review*; and he suggests also the way in which he thinks this difficulty might be treated. "How," he asks, "are Guardians and the Local Government Board to have the guarantee for such careful voluntary action in permanence? There is no certainty but by authorized visitation or inquiry; \* \* \* and at all events the latter is not by any means difficult. The Local Government Board has agencies in every part of the kingdom, some of which might be employed to gain for them trustworthy information as to the character and conduct of the foster parents, and as to the amount of supervision afforded by the ladies' committee, as to the health of the children, and the opportunities given them for education, intellectual and religious;" and he proposes, for the better encouragement of this mode of dealing with pauper children, the formation of "some central agency within the Local Government Board, to which application might be made by duly constituted committees, and to which Guardians might supply lists and reports of the children whom they were willing to board out. Such a plan would at once bring into action committees already prepared, and call into existence many more."†

(2.) Secondly, there is a call for the better protection of boarded-out children from the interference of their own criminal or dissolute relations. As the law now stands, a child may have become as dear to its foster parent as his own flesh and blood, and be the very sunshine of his home; and then, suddenly, it may be claimed back by the real parent, after years of desertion, to be dragged down into the vortex of sin in which he or she has been living; to be molded even into an instrument for the better carrying out of his own evil courses. This is surely intolerable! In republican America short work is made of such "liberty of action." In the State of New York, "a parent, or other person, having the care or custody for nurture or education of a child under the age of 6 years, who deserts the child in any place with intent wholly to abandon it, is punishable by imprisonment for a period up to seven years." Such a law, it will be seen at once, precludes the possibility of the reclaiming of a child who has been once deserted; for to make the claim would be to confess at the same time liability to the punishment incurred.‡

Some such law is imperatively called for in our country. For be it remembered that one of the beneficent results of the system of "boarding out" is the formation of a per-

\* It would be well if power were given to all Boards of Guardians to board out children beyond the limits of their respective unions, under the conditions laid down in the order of twenty-fifth November, 1870.

† In the very important "Sessional Proceedings" of this society, which took place in London in March, 1883, the President, Lord Aberdare, in summing up the discussion, expressed himself thus on this point: "It has been said it is a system which depends greatly upon supervision. I agree. And why should supervision not be given? It has been proved that the cost of boarding out is not half that of keeping children in district schools; and a small portion of the sum saved might well be applied in securing proper supervision." On the more general question as to the best plan of dealing with these "children of the state" he said: "Whatever good may be fairly predicted of those other systems in which children are congregated together in larger or in smaller numbers in district schools or in cottage homes, I think that the impression produced—and I came here with my mind as open as possible to endeavor to decide according to the evidence—is that the best chance of fitting a child for the battle of life, and training him to do his duty, is to place him out in a home in which foster parents may replace those whom he has lost, or who may have deserted him."

‡ In the State of Massachusetts a still more stringent and thorough system of dealing with parents, who neglect the performance of their duty towards their children, prevails. A "State agent" is appointed in various localities. He is present when any child is brought before a magistrate for any juvenile offense. He "admonishes" the parents on the first occasion; they are fined if the child offends again. When there is "an utter absence of suitable home care or restraint" the child is boarded out; but "such gross neglect of parental duty" is punishable by fine and imprisonment. Committees of ladies find suitable homes for the children, and "there are many such to be got;" these committees exercise oversight in conjunction with the "State agent." When such children appear to be likely to be sources of profit, their vicious parents are apt at times to



manent bond of affection between the foster parents and their charges. The home thus formed is looked back to usually as still the harbor of refuge when manhood is reached. The girl comes back there when out of place. The lad, who has gone forth into the battle of life, if it goes against him for the time, can still count on receiving there a "welcome home" again till his prospects once more brighten. Thus are even these poor deserted children of the state made partakers of "*Domestic happiness, the only bliss of Paradise that has survived the fall.*"

## SEC. 217. OBSERVATIONS OF MISS HILL.

Miss Florence Davenport Hill, of England, in a paper entitled "There's no place like home," printed in the *Philanthropist* for January, 1886, says of the boarding-out system:

The advocates of boarding out claim for it many advantages over other methods of training parentless children, and support their claim by stubborn facts. Perhaps, writing at the Christmas season, we may appropriately point to the happiness it bestows. Let us think for a moment of the little ones in a loving home—whether rich or poor it matters not—of the boy of five or six who, little as he may be able to express his feelings, is in sympathy so close with his mother that life without her seems impossible; or of the darling of her father and elder brothers, who rules them, and indeed all the household, by the very power of weakness, and to whom, whether she be radiant in joyous health or pale in suffering, all pay self-sacrificing homage. And again let us picture them no longer the center of that loving circle, with its outer ring of kindly uncles and aunts and troops of cousins and honored friends, but forming the hundredth or may be thousandth part of a heterogeneous mass of child life, there to stay till childhood be left behind. Can we believe that any happiness in its true sense remains for them? If they could realize the fate that had befallen them their hearts must break; but the child does not look forward, and though here and there one thus torn up by the roots from home and dabbled down in the big school or orphanage, who is more than usually sensitive, does pine away and die, the rest live on with a sense of misery none the less abiding that it is not expressed, and of longing for individual love which the kindest and most watchful of nurses and teachers are powerless to supply wholesale. The affections which find nothing to cling to must in time wither away, and an intense and defiant selfishness too often comes in their place. "God reveals himself to us," it has been beautifully said, "in the affection of those around us." If we cut off that revelation a child-atheist may be the terrible result.

It is sadly true that there are homes in nothing but the name, from which a well-ordered school is by contrast a blessed refuge; but as the school is to such a home, so is the real home to the school. Where the numbers assembled together are smaller, so, in almost arithmetical proportion, will the evils be less; but only amid the surroundings appointed by God for its upbringing will the child find the happiness which is its due. "Granted," my readers may say, "but you allow that the home must be a happy one to surpass the school, and though there may be a few here and there available for your orphans, you will never find good homes willing to receive a tenth, nay a hundredth, part of the parentless children to be provided for." It has been my privilege to visit many and many a boarded-out little one here, in Scotland, and in Australia, and I have taken care that mine should be "surprise" visits. The instinctive clinging to the foster parent at sight of a stranger, the unconscious assumption by the little boarder of proprietorship in the house and its belongings, human included, who frequently become for all practical purposes his blood relations—the pride on the other hand of the foster parents in the child's achievements, whether in the growing power of walking and talking and like infantile marvels, or in the later triumphs at school, and the common custom of endowing the little creature entrusted to their care with their name as well as their fatherly and motherly love, proved beyond all possible doubt the genuineness of the home.

And then as regards the supply meeting the demand. It is a fact which I believe amazed those to whom experience made it gradually known, that wherever boarding out thoroughly well administered has taken root, applications for children are constantly on the increase, and it is satisfactory to note, from persons of better and better social position. As one of the Metropolitan Board of Guardians I learnt how those bodies are beset with applications from boarding-out committees to send them children for the homes yearning to receive them; so much so that we could pick and chose among several counties and select the inland or the seaside home, the bracing or the mild climate, as best might suit the little ones we could supply. So at the conference of workers in boarding out, held last July in the Jerusalem Chamber, the lament, whether from those present or in letters from

claim them back; but "such claims are sternly disregarded from mercy to the children." The results of this system are "remarkably satisfactory," a very small percentage are passed on from the foster parents to reformatories; the number in the latter has been diminished by 50 per cent in the last twelve years.

A short account of this system is given in the appendix of the last "Report of the Department of Industrial and Reformatory Schools" in the colony of Victoria, Australia.

\* Rev. R. W. Dale.

others unable to attend, was that though homes abound, children were not to be had. "It is the children," they said, "not the homes that are wanting."

No doubt one reason why boarding out makes children happy is that it makes them well. Although they often come to the home in a sickly state (I have known of foster mothers asking for a sickly child as more needing care), illness afterwards is rare, and so many escape it altogether that the percentage of medical expense for all amounts to only a very few shillings per head in the year. The children coming from London and other large centers of population get rosy-cheeked and robust, and often increase rapidly in weight, but the change is still more remarkable in those who have previously seemed permanent invalids. My memory recalls a workhouse infirmary ward where many patients, adult and infantile, came and went. All seemed in due course to depart, except the pale and silent occupant of a little child's chair. "Little Billee" had some affection of the spine, and it appeared to be an accepted fact that he was to spend his life a pauper of the spine, and it was resolved to try what boarding out would do. He was transferred to a carefully chosen home, and after a few months was so changed that he could trudge to the village school with other children, never during a whole quarter missing an attendance. Another vision rises before me, a Tiny Tim—peevish, however, from constant *malaise*, which the hero of the most exquisite of home pictures ever drawn by genius, never was. Month after month our Tim lingered in the Pauper School Infirmary, sedulously watched by the medical officer and kindly tended by the nurse, as the child's manner towards her showed whenever she could find time to take him in her arms, but always ailing and fretful. At length it was decided to board him out. As soon as he reached his foster home his health began to improve, his querulousness vanished, and before long he was quite well, and so continues. And yet another little creature comes back to my mind—a foundling in an East-end workhouse. So wretched was her bodily condition, either from inherited disease or exposure at birth, that at three years old she could not walk. The Guardians of that union had long before adopted boarding out, but so helpless an invalid it was supposed no cottager would receive, and she remained in the workhouse, as well cared for as circumstances rendered possible, but with the dreary fate before her of growing up useless and miserable unless released by death. A suitable home was, however, promised if the Guardians would consent to the experiment. They did so, and country air, a kind and intelligent foster mother, above all, the blessed atmosphere of home, seemed to work a miracle. No medical attendance was found necessary. By the time she was four, little Mary could go with the neighbors' children through fields and over stiles, as the path lay, to school, and, developing a sturdy self-dependence, would, at a not much later age, march off to church by herself if no one were ready to accompany her. She is about eight years old now, a robust and singularly active child. I might multiply such instances of my own knowledge, while those more practically concerned than I with boarding out could make the list a very long one.

To prescribe for people, whether little or big, conditions of rational happiness, is a potent recipe for making them good; and it is no matter for surprise, therefore, that the outcome of boarding out shows a very large proportion of honest, industrious, and right-minded men and women, loving and dutiful in the relations of family life, and self-dependent, law-abiding citizens. It will not, indeed, make human nature perfect, and some failures there are, but I know one committee which has been at work fourteen years, and of the eighty children it has taken under its care, some of whom are now married and settled in life, there has not been one failure among those yet gone out into the world; and I learn on excellent authority that a second, of still longer life, has the same unblotted register to show, while a third, in operation since 1871 (by which, however, girls only are received), has, likewise, no failure to report, unless the return of one poor child to the workhouse in consequence of malignant and incurable disease, making self-support impossible, be regarded as a failure. Scottish, Irish, and Australian experience gives like pleasant proof that a happy childhood is the high road to adult well-doing.

But my readers may further ask, "Where is the money to come from which these happy homes must cost?" Not only need no more be found, I answer, than is required for the children's support in schools, orphanages, and asylums, but full one third less amply suffices. The reason is a very simple one. There are no structural or staff expenses, and the money spent is so disbursed that every penny tells. Thus the saving by boarding out to the ratepayer in regard to pauper children, and to the benevolent supporters of orphans of a higher class, is a recommendation well worth considering, though not that on which I wish now to dwell.

Let us at this, of all seasons the most sacred to family affections, strive to restore the happiness of home life to the parentless children of our land.

## SEC. 218. FURTHER EXPLANATION.

The Association for the Advancement of Boarding Out issued a pamphlet in which it is said:

Last month we showed that the need had become urgent for a society which should bring into cooperation the manifold agencies existing throughout the kingdom, but hitherto isolated from each other, which have sprung into being for the purpose of "boarding out." But possibly some of our readers may not yet have recognized the need for boarding out itself, or even be aware of what that phrase means.



Whoever has studied the reports of the commissioners appointed under the poor law of 1834 is aware of the grievous wrong of leaving children to mix with adult paupers in the workhouse, and of the futility of brick and mortar hindrances to such association under one roof. To remove this wrong our pauper schools were devised. When planned at a distance from the workhouses they were undoubtedly a great improvement. Had the original idea been followed of dividing the children into small groups, preserving as far as possible the features of family life, the evils inseparable from massing them in hundreds would have been avoided. But such grouping involves much additional expense and difficulty of administration. The larger the numbers dealt with in one body, the less the cost per head and the fewer the complications in the working of the great machine in which the children and the staff of officers and servants needed for their care constitute. Thus Guardians were tempted to enlarge their schools, or to begin by creating vast ranges of building, and so all power of treating the children individually was lost.

Nevertheless, the cost of these institutions is unavoidably heavy, while the results, even in spite of anxious care and an earnest desire to secure the welfare of the child, are rarely such as to reconcile us to the system. The exhaustive report of the late Mrs. Nassau Senior, on the outcome of such training in regard to girls, shows why the proportion of failures must be large; and though it is generally supposed that boys do not suffer from it, we fear that a like inquiry into its effect upon them would meet with an unsatisfactory answer.

One fact, patent to all familiar with the class concerned, is that it offers very unfavorable material to work upon. A small minority are the offspring of our respectable poor, and may compare morally with children of any rank; but a large proportion have inherited the feebleness of constitution which originally reduced their parents to pauperism or left the children orphans at an early age. By far the greater portion, however, have a terrible inheritance, not only of physical but of moral inferiority, to weigh them down. To send these children out into the battle of life equipped for the fight with sound minds in sound bodies is a task that must always tax our strongest efforts.

It needs no argument to prove that God's ordinance is the best. For the upbringing of children He has appointed the home. Boarding out restores the child to family life; but, further, it selects for each little one family life under the most favorable conditions. The foster parents are chosen for high character and kindly disposition. Their dwelling must be wholesome; their means must raise them above the need of making a profit out of their little wards; and their family circumstances must be such as to secure that the boarder will be treated as a veritable child of the house. Persons unacquainted with our working classes, though admitting that such ideal homes may be found here and there, cannot believe that the supply will equal the demand. But more than twenty years' experience in England, and experience extending over much longer periods in Ireland and Scotland, shows that this belief is mistaken. The members of our association have made careful inquiry on this point, and find that *it is the children, not the homes, that are wanting.*

The method of procedure is as follows (limiting our remarks this month to boarding out beyond the bounds of the union to which the child belongs, the course of action in these cases being regulated by the provisions of the Local Government Board order of 1870): Two or more residents of good standing, and usually in a rural neighborhood where cottagers, suitable as foster parents, are known to them, form themselves into a boarding-out committee, choosing one as Secretary. He or she forwards to the Local Government Board the members' names, together with references as to their position and qualifications, and applies for a written authority to act. When the department has satisfied itself of the fitness of the persons so applying, the authority or certificate is granted, power to withdraw it on sufficient grounds being, of course, reserved. The committee is now competent to enter into agreement with Boards of Guardians, and to find homes for, receive, and watch over any children entrusted to it under the conditions laid down in the boarding-out order. These conditions were carefully devised to secure the well-being of the children, and yet to leave to committees and Guardians all compatible freedom of action. They were, however, admittedly tentative, and experience shows that some modifications may be desirable. The Local Government Board does not end its care of the children by granting the certificate, and keeping a list of committees (of which there are now seventy-five in action) available for reference by Boards of Guardians. Every agreement must be submitted to it for confirmation; the name and address of every child boarded out is recorded at the office, and from time to time an inspector is sent to make the fullest examination into its condition. The published reports of these inspectors afford irrefragable proof of the success of the system.

Thus is the parentless child restored to home life, with all its blessed relationships which stand him in good stead when he goes out into the world to earn his living; when he knows that his well-doing is as precious to those remaining in the humble cottage as if he had been born beneath its roof, and that, should sickness or misfortune overtake him, he will there find the shelter and counsel for lack of which the state's fledglings must often sink and fail. Not rarely the child takes the surname of the family upon which it is grafted; in any case, its pet appellation, Dick, or Jack, or Polly, becomes familiar to all who know it; and a clearly-marked individual existence gives that opportunity for healthy development of character which one among many hundreds, identified possibly only by its number, can never have.

Although cost must come second in our estimate of different methods of dealing with these children, it is no insignificant consideration, and the economy effected by boarding

out is an important fact in its favor. The cost of maintenance in the workhouse or pauper school is difficult to ascertain, owing to the great fluctuations to which it is liable from outlay on buildings, etc.; but it may be roughly computed as ranging in workhouses from £13 to £24 a year, and in pauper schools from £15 to £40, and upwards. The total cost of boarding out rarely exceeds £13, and often falls below that sum.

That a plan so simple and so cheap should not have spread more rapidly among us is naturally a cause for surprise. In Scotland, its proved success has led to its general adoption. Why should not England profit by it in equal degree? The kindly doubts of Guardians, to whom the plan is new, whether children would be safe beyond their sight, is one reason; another is found in the large sums we have spent here in creating pauper schools—almost unknown north of the Tweed. But the safeguards provided by the Local Government Board, the publicity in which boarded-out children live, above all, the testimony of years to their safety under certified committees, may set benevolent apprehension at rest. Whether it is true economy to retain any child that can be boarded out within the rest. Whether it is a question for Guardians gravely to consider. We believe that they will find our plan effects a double saving to the rates; first, by lessening by more than half the present cost of the child; and, secondly, by its greater success in merging him into our self-dependent population. As the system grows in public favor, the category of those who may legally be boarded out will, we may hope, be more and more extended; and the time will come when no children but those casually under the Poor Law Guardians' care will need a special edifice to receive them, other uses being found for surplus school buildings.

## SEC. 219. SOME EXPERIENCE OF PRACTICAL OPERATION.

In September, 1886, the Association for the Advancement of Boarding Out published a paper giving some account of the actual working of the system:

In July we described the steps to be taken to form a certified committee, and to enter into agreement with Boards of Guardians for the reception of children. This month we are enabled, by the kindness of one of the earliest supporters of boarding out, to give, from his experience, some insight into the actual working of the plan.

"I first saw boarding out going on," writes the Rev. W. P. Trevelyan, "some eighteen years since. The suggestion came to our local Board of Guardians from their former Relieving Officer, who had got the same appointment in the Birmingham union. One of my old parishioners, of her own accord, went to our workhouse and got two girls. I was struck by the way in which she treated them, and I now saw actually going on what before I had only heard of as to the value of the system—information which I originally derived from the movement at Birmingham, set on foot there by Miss Joanna M. Hill."

A committee was formed in my parish in 1871, and in July of that year we received from St. George's (Hanover Square) union thirteen children. The ground had been prepared by explaining the ins and outs of the subject to our villagers, and when one of the women said to me, "I have been thinking about these children, but I feel that if I do take one my house must always be its home," I was satisfied that the essential point of the matter had been taken in. Had I still doubted, another small but yet very significant incident would have convinced me. A little creature of five, who had lately come, was sitting at tea with her foster parents, the husband being a particularly kind and gentle man; she looked up and said, "I didn't know I had a father and mother. I am so happy."

The first planting of these thirteen children was rather an amusing process. I met them at the station, and dropped them at the homes prepared for them. Up to a certain point all went merrily; but when we came towards the last the remaining ones burst out crying. The loss of their companions had upset them. Safely deposited in their homes, however, their tears soon stopped.

Some years passed before the neighboring parishes caught the infection; but the leaven was working. In the meantime, more homes were forthcoming in my own parish. Now, eight parishes—all but one adjoining, and well within a radius of five miles—have joined in the work, and, with one exception, where one girl only remains now ready for service, the plan is in full operation in all of them. At the present moment we have in homes under our committee fifty-seven children, and three more very good openings will soon be filled. Our number might be satisfactorily maintained at sixty without extending our work into other parishes.

The feeling is very good towards the children on the part of the parishioners generally as well as of the foster parents. They become identified with the parish, and are taken as a matter of course. It is plain that the boarding-out system may be worked as effectively on the south as on the north side of the Tweed, and become an ample means for the care of all friendless children, giving practical effect to the late Mr. George Moor's words that "We must begin at the beginning—every boy and girl born into the world is entitled to a fair start in life."

With reference to results in after life—the crucial test—our experience, so far as it has gone, shows that a large proportion of the girls will succeed in superior domestic service. Of two sisters who came to us in July, 1871, both have done well in good situations, and both are now well married. The youngest was for six years nursery girl and then nurse

in the same family, and her husband is still the coachman. Their brother, who was some years in our service, is now the third gardener in a large establishment.

Of another family who came at the same time, one became a laundrymaid in a gentleman's household, and about six years ago married a mechanic earning high wages. The second girl was in service as parlor and house maid, but died at about 19 years of age of a rapid consumption. She was tenderly nursed through her last illness in our village hospital, and she lies in our churchyard. This girl was much beloved from her nice nature of character, and her funeral was really a touching sight. No grave is more carefully kept than hers. The third, a brother, was apprenticed at a large railway factory.

Of the last four girls who have gone out into the world one is now cook in the clergyman's family where she began her work at 14 years of age, more than four years since; second is still living in her first place, also after upwards of four years' service; and third is in our own service, and a very good young servant she is. The fourth was sent to Canada.

Here we touch upon a very important matter—the value of Canada in the case of girls who in this country lose their places through temper, and who would drift back to the position from which boarding out has rescued them. The training in the every-day affairs of life this has afforded them, and their value through the scarcity of female servants in Canada, gives them a great advantage, and they seem always to have the opportunity of marrying if they wish. We have found no difficulty in getting them out to Canada, and with the exception of one girl, who we know married from a good situation a well-to-do blacksmith, we have kept up correspondence with all. The proportion who need the fresh change Canada gives is small, but the lowest pauper type will always provide some. Here is an example: One of our girls, whose drunken father had deserted his children after the mother's death, was placed with the best of foster mothers; but when she had to earn her own living she would not do her duty in service. A brother, who had become a sailor from the Exmouth, had some years before been sent by the worthless father to get the girl from her foster parents, but when he saw how she was cared for he turned right round, and has ever since helped us in every possible way. An elder sister, who had never been with us, had some time before been sent to Canada with Miss Rye, and had married prosperously. The brother paid the fare of the younger one to Canada, and though for some time she hung on her relatives without the pluck to face real work, she is now going on steadily in service, and I have very lately received an excellent account of her. In a similar case A—, when she passed off the rates, hung heavily on her foster mother from sheer idleness and temper. To show how generously the latter bore the burden, I may mention that, regarding it as an exceptional case, I offered help towards the girl's maintenance at home. But the foster mother refused to accept it. "I won't take it for A—," she said, "but if you must give it, you may put it into E—'s account in the savings bank," E— being her present foster child. A— had been on and off in service for some years, and at about 19 years old was waiting for a fresh situation, which there was great difficulty in getting, when it was decided to send her to Canada. She soon got a place there, at wages far above any she could obtain in England, and before long married satisfactorily. These, and indeed all our Canada cases, have been well helped and watched by friends there whom we have interested in their welfare, and show that it has not been a mere shovelling of the girls off our hands to save trouble and anxiety, but a means of securing a respectable and happy future to those who could not fill high class situations at home.

But to show what care can do here for girls, even after they have gone into situations, I may mention one who, after some three years in service, proved impracticable through temper. She was sent to a Girl's Home for two years, gradually came round, and is now a cook in a place which she got after all but three years' service in the situation obtained for her on leaving the Home. In this case the tender care shown throughout by the foster parents was perfect. They never for a moment slackened in their kindness. The girl is now the greatest comfort to her foster mother, who has become a widow. She spends her fortnight's holiday with her every year, and every Christmas sends her a well filled hamper.

However anxious to do so, it is impossible for the officials of a workhouse thus to watch over the girls during the first years of service, and this is the cause of many failures. The boarded-out girls have a double advantage in the foster parent, and in the member of the committee who works hand in hand with her. With regard to boys, we could scarcely take them if we had to provide them all with work. They would hang on hand. But the Exmouth training ship solves the difficulty. Unless in exceptional cases, our boys are taken at 12 for the Exmouth, where they are fitted for after life so well and happily.

The connection with their foster parents is maintained by their spending their holidays "at home." This goes on as a matter of course. The influence is most valuable. One of our servants is the foster sister of a boy who went from the Exmouth to the band of the Fifty-second Light Infantry. He has spent all his furloughs at his foster home, and is fully a member of the family. The being grafted into a family is most valuable for boys, though perhaps not so much a necessity as for girls. "Infants are not trained by rules," says Julius Hare, "but by the ever present, ever watchful love of their parents."

We have received in all eighty-two children since we began in 1871, and I can with perfect confidence assert there has not been one moral failure. We had, in one instance, to return a girl whose faculties failed. It was a very touching case. She was not up to the mark when she came, and she grew eventually deaf, blind, and weak in intellect. She paid a visit to her foster mother, by the latter's wish. After she had been returned to

London, I brought her down from the Fulham Road Infirmary; but afterwards she became still worse, and is now permanently in a deaf and dumb asylum. The poor girl's letters to her foster mother from the infirmary showed that the one bright bit of sunshine in her life was the foster home, and the kindness of its occupants.

## SEC. 220. HISTORICAL ACCOUNT.

In October, 1886, the Association for the Advancement of Boarding Out gives the following historical account of this system:

Boarding out in the form of fosterage has existed in Ireland from time immemorial. The strong family affection and loving nature of her people are peculiarly favorable to its success. So strong, indeed, was the tie between foster parent and child known to be, that in Edward III's reign an Act was passed prohibiting the Irish from receiving English foster children. It was the invader's policy to keep the races from mingling. How different might the history of Ireland have been had the mutual affection engendered by fosterage been allowed to bring them together!

Prior to the Irish poor law of 1839, grand juries of counties and cities had power to present £5 annually for twelve years for the maintenance in suitable families of deserted infants. One only was placed in a family, and the result was that it became to all intents and purposes a member of it. When this provision was superseded by workhouses, a frightful mortality ensued.

According to the eminent statistician, Dr. Neilson Hancock, it was in Cork workhouse ten times that of the national rate, while in North Dublin workhouse it amounted to 116 per cent per annum—"in other words," he said, "children under 2 years of age were not likely to live more than 10 months in the house." To stop this awful slaughter boarding out was resorted to. After various futile attempts at legislation on the subject, a bill was passed in 1862 authorizing Poor Law Guardians in Ireland to place young children out at nurse, the limit of age being subsequently raised to 13. By the end of 1883 (the latest date to which we have a return) one hundred unions had adopted the system, the number of children thus dealt with amounting to 2,411.

In 1876 the Local Government Board for Ireland issued a boarding-out order very similar to those of the English department, but, unhappily, including no provision for obtaining the help of voluntary committees. In some unions, for lack of due supervision, the children have not been well cared for; but in few cases, indeed, has their lot been so sad as within the workhouse walls. But wherever the Guardians themselves, or their clerk, take an active interest in the working of the plan, more especially where, as at Cork and Dublin, the coöperation of ladies in watching over the children is accepted, success is secured.

Thanks to Mr. D'Esterre Parker, a Guardian for Cork, and who is also a Vice-President of this association, boarding out was adopted in his union directly the Act of 1862 was passed. A return given in the report of the Conference on Boarding Out, held in London last year, shows that up to that date 921 Cork children had been boarded out. Only 36 had died during the interval of nearly twenty-three years, though large numbers had been placed out when only a few weeks or even days old, and as regards the early period of the experiment, when suffering from the sickness incurred in the workhouse. The twenty-fourth annual report of the Boarding Out Committee of the Cork Board of Guardians, just issued, brings information to the present date, and its details may be taken as an example of the working of the plan wherever it is properly conducted. It states that there are 238 children now boarded out within the limits of Cork union. The recent periodical inspection showed that, with a few exceptions, all the children were "the picture of health and happiness, growing up strong and robust," almost all the exceptions occurring in a district where the young babies are placed. Three of these have died during the year. One of the elder children looked insufficiently nourished, and another was backward in lessons. The foster mothers were allowed to keep them, after an admonition from the Board. Of one boy, a cripple from birth, the period for boarding out had expired. He entreated to be left with his foster parent, who was equally anxious to keep him if some assistance were given, as he is quite helpless. He remained, with a grant of four shillings a week out-relief. Ordinarily, when boarding out ceases, the children are adopted by their foster parents, and are merged in the working population. "There is no instance on record," says the report, "that any of them return to the workhouse, except in case of serious illness, but those leave the moment they are recovered."

The average cost for each child during boarding out is £7 6s. a year. It is paid monthly by the relieving officer, who reports fully upon the condition in which he finds the children. This sum covers maintenance, clothing, and school books, and fees. The cost in the workhouse would be £9 2s.

The Cork Guardians are fortunate in having the coöperation of ladies in the care of their children. Warm thanks are expressed in the report for their visits to the children at their homes and in school. Their further help is invited in devising, together with the Guardians and the clergy of the district, means for improving the general education of the children, which is found to be below the desired standard.

It will be remembered that the report of the Boarding Out Conference contains in its appendix a letter from Mr. Greig, Inspector for the City Parish, Edinburgh, explaining

the conditions under which children *not* orphans, or deserted, are boarded out from parish. The Cork Guardians, looking back on their long and successful experience of system, desire similarly to extend its application; and with a view of obtaining the necessary powers, they signed, at a meeting of their Board in September last, a petition to Parliament, praying that the Act of 39 and 40 Victoria be "amended by extending salutary provisions to any workhouse child whom a Board of Guardians should think to be sent out to nurse."

## SEC. 221. THE BOARDING-OUT SYSTEM IN NEW SOUTH WALES.

Miss Florence Davenport Hill, of England, who has given a great deal of attention to this system, says of its operation in New South Wales:

The Sydney *Mail* of July 11, 1885, has a leading article upon the "Boarding-out report for the year ending April 5, 1885, presented by Dr. Renwick, President of the state children's Relief Board for New South Wales. This department was created four years ago when boarding out, introduced experimentally by private effort, was taken under the direct charge of the state, the continuation, however, of voluntary help being sedulously provided for. Special legislation accompanied the transfer, and under these several conditions boarding out has made rapid progress. The obstacle which retards its extension at home, the existence of large schools, is being dealt with in New South Wales, as it has already been in Victoria, and to a considerable extent in South Australia, by clearing the children and appropriating the buildings wherever emptied to other purposes.

The following copious extracts from the report appear in the same issue of the *Mail*: "The institutions (industrial schools, orphanages, etc.) are already partially depopulated by the operations of the State Children's Relief Department, and it is generally understood now that under the continued vigorous prosecution of the boarding-out system, they will eventually be entirely emptied. Thus, the Asylum for Destitute Children at Randwick, which a few years ago contained nearly 800 children, now has only 10 inmates. The numbers at the Protestant and Roman Catholic orphan schools have been reduced from 250 and 350 children to 50 and 70 respectively; and the inmates of a national receiving-house—the Benevolent Asylum—are now placed in homes as soon as they are cleansed from the physical impurities with which, as a rule, they are afflicted when rescued from the city slums or passed in from neglected homes. In Victoria, a process which I deem possible of accomplishment in this colony has actually taken place. Gradually one institution after another has been deprived of its inmates, who have been boarded out. As the Secretary of the reformatory and industrial schools in Victoria wrote last year: 'After the nursery, with its 109 infants, was emptied in 1873, the children were in rapid succession withdrawn for boarding out; in 1874, from the Sunbury Barracks (afterwards reoccupied for a time); in 1875, from the St. Kilda Road and Ballarat Industrial Schools, and the Nelson (training ship); in 1878, from the Geelong School, and in 1880 from the large buildings at Royal Park, since handed over to the Immigrants' Aid Society leaving no single Government industrial school, with the exception of the receiving department.' In this way the whole mass of the state children may in the future become subject to this Board. There is no reason whatever why this result should not be reached and its attainment would benefit the children and the state alike. For proof of this assertion I need only refer to the appendices to this report, which bear upon the improvement of health and manners of the children who have been removed from the asylums and restored to home life, and to the comparative statements of the cost of training them amidst and apart from the institution surroundings. Such a course is therefore commended on the assumption of the superiority of boarding out—in its physical, moral, and financial aspects—as a means of caring for state children; and testimonies to that excellence, direct and indirect, can be culled from all the literature on this important subject of state concern.

"Our official year ends on April 5, and at that date, in 1884, there were 552 children under the control of the Board; 527 children have been boarded out during the year under review—namely, 353 boys and 174 girls; 21 boys and 32 girls have been discharged to relatives and friends, after due inquiry into the character and circumstances of each applicant; and 2 boys and 1 girl have died. So that on April 5, 1885, the period of the official year, there were 1,026 children under control—namely, 564 boys and 462 girls, the great bulk of whom, as will be seen from details further on, are scattered throughout the healthy country districts. Of these children, 509 boys and 354 girls are placed out as boarders—that is, their maintenance is paid for at stipulated weekly sums; 15 boys and 35 girls are adopted without cost to the state; 26 boys and 61 girls are apprenticed, and 10 boys and 12 girls are at the cottage homes. The children boarded out are paid for at the following rates: One at 10s. a week, this poor child being afflicted mentally and physically; one at 7s. 6d. a week, 35 at 7s., and 32 at 6s. a week, in consideration of their delicate health, and the remainder at the usual subsidy of 5s. a week, with the exception of seven, who, being under three years of age, are paid for, as provided by the regulations, at the rate of 7s. a week, in view of the extra trouble their tender age entails upon the guardians (foster parents). The extra payment for the afflicted boarded-out children necessitates an expenditure of £279 14s. a year in excess of ordinary boarding-out fees, which would not have to be incurred if the department limited its operations to healthy children.

"The children have thus far been taken from the institutions in the following numbers: Benevolent Asylum, 683; Asylum for Destitute Children, Randwick, 220; Protestant Orphan School, 104; Roman Catholic Orphan School, 91; Infants' Home, Ashfield, 44; Orphan School for Girls, Biloela, 12; Nautical Schoolship Vernon, 10; Children's Industrial School, Glebe, 6; Coast Hospital, Little Bay, 4; Shaftesbury Reformatory, 1. It has been the endeavor of the Board to remove the children as quickly as possible after their admission to the Benevolent Asylum, in order to prevent their transfer to the permanent institutions. Thus the admissions to Randwick from this source have, since my previous report, practically ceased, because, although 15 children were on one occasion transferred there from the Benevolent Asylum, they were almost immediately boarded out in country homes.

Independently of the granted applications, there are at present 561 applications unattended to on the register for 610 children: 293 are for boarders, 257 for apprentices, and 57 for children for adoption. Of these, 432 are from Protestants, and 129 from Roman Catholics. Last year I invited the coöperation of the Roman Catholic community in providing homes for the large number of the children of their faith who were then in the public institutions, and for whom applications were limited. I am glad to say that the aid rendered by the Catholic clergy and lady visitors has resulted in a large number of good Catholic homes being obtained during the year: 178 children of that denomination have been boarded out, and the usual precautions have been taken to place them with guardians of their own faith, who are desired to send them to Catholic schools when practicable. The Board have strictly adhered to their determination not to board out children to others than foster parents of their own religious denominations—that is to say, the broad distinction between Protestants and Roman Catholics is strictly preserved; and the only departure from this rule that the Board are aware of is in the case of two Protestant children who are placed with their Catholic grandmother, who, however, sends them regularly to their Protestant church and Sunday school, and to the public school. It was thought that it would be cruel to separate these little ones from their aged relative, who had been their guardian since their parents' death, and who was compelled by necessity to appeal to the Government for help. In order that the Catholic guardians may not be compelled to send their foster children to the public schools, the Christian ladies having charge of the convent and other Catholic schools have, when requested, permitted the children to attend without payment of fees; but it is worthy of remark that many of the guardians prefer to pay rather than avail themselves of this concession.

"Altogether, since the initiation of the department, 131 children have been restored to deserving relatives—viz., 8 in 1881, 17 in 1882, 56 in 1883, and 50 in 1884; but these figures do not nearly represent the number reclaimed through the indirect instrumentality of the Board, as many were withdrawn from the asylums by their friends when it became known that they were selected for boarding out. The difficulty of discriminating between deserving and profligate parents is one common to all the colonies, and a suggestion in reference to it was made last year in Victoria which is worthy of consideration. It is that the children should be discharged upon probation, to be reclaimed perforce if they were afterwards found to be languishing in poverty or lapsing into vice or crime. This could, of course, only be done by legislative provision, and it is provided for in the measure which I have already foreshadowed.

"As the boarding-out system has only been four years in operation, its results on society cannot yet be looked for; but evidence of its working well, and therefore promise of good fruit, is found in the generally assuring reports to hand of the condition of the hundreds of children now placed out. It has been occasionally found necessary, no doubt, to cancel engagements with foster parents in consequence of their demerits, and the Board has been obliged in several instances to recall children of incorrigibly bad habits. These, however, are exceptions to the general rule of success, and indeed, go to prove how faithfully the conditions of success are observed by the Board.

"Reference to one experience of the Board will prove interesting. They have always striven to remove children from city or town influences, which are invariably morally disturbing; and for physical reasons, also, it has been customary to seek for homes in the country localities. No happier results have been recorded since operations began than those in connection with the placing of boys found unmanageable near to towns, on dairy farms. The dairy farms of the southern coast district, more particularly, afford a splendid field for this particular division of our work, and since my previous report a large number of boys, of ages varying from 8 to 11 years have been sent to the farmers resident from Wollongong to Ulladulla. They will acquire a valuable training in an important department of agriculture, and become a trustworthy element of a class of labor not too plentiful in the country. These children all attend school regularly, and their time out of school hours is not all spent in idleness. They assist in the ordinary work of the dairy and the farm, as the farmers' own children do, and they have consequently neither time nor opportunities, as they have in the towns, for indulging in mischief or in evil courses."

The "cottage homes" referred to in the second paragraph of the extract, is a new feature of the year. In each are placed under the charge of a carefully selected motherly person, a few children too sickly or otherwise afflicted for an ordinary foster home; but it is not intended that they should be permanently subjected to even this amount of "institutionalizing," but that they should be passed on to the care of foster parents as soon as their improved health may permit.

The average cost respectively of boarding out and of maintenance in institutions is to be £16 19s. and £24—without any allowance in the latter sum for rent. At least equal difference exists at home.

Dr. Renwick records the same disposition on the part of relatives to withdraw children from institutions rather than leave them to be boarded out, with which we are familiar here; and touches upon the difficulty of discriminating between relatives who are worthy and those who are unworthy to be entrusted with the care of them. The suggestion cited as made in Victoria that the children should be discharged to relatives applying them on probation, reclaimable if neglected or ill-used, recalls an admirable feature of the Massachusetts plan, and its fitness for adoption here deserves our careful consideration.

## CHAPTER XIX.

### CAUSES OF CRIME.

- SEC. 222. In general.
- SEC. 223. Want of a trade.
- SEC. 224. Ignorance.
- SEC. 225. Intemperance.
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- SEC. 228. Looseness of marriage obligations.
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#### SEC. 222. IN GENERAL.

It possibly does not come within the scope of our duties to inquire into the causes of crime, nor perhaps would such an inquiry result in any practical benefit. Crime has always existed in the world, and always will exist. Yet, by looking at some of the causes that produce crime and criminals, we may be able to devise means to remove those causes or to lessen their power for evil. We have sent letters to various persons asking them to state what in their opinion are the principal causes of crime, and their replies will be found in the appendix of correspondence.

In treating of this subject we shall be compelled to be brief, and we may in the beginning say that the causes of crime may be divided into two great classes, namely: preventable and non-preventable.

#### SEC. 223. WANT OF A TRADE.

The want of a trade is one great cause leading to crime. A person who has a trade feels that he is independent, and generally his companions are honest and law-abiding citizens. If he happens to be out of employment or becomes sick, he may look to the members of his craft for assistance. The great majority of those who are sent to prison have no trade. They were compelled to perform such labor in the outside world as they could secure, and all of it of a temporary character. If they had a trade at which they could find steady employment they would undoubtedly have been saved from a criminal course.

#### SEC. 224. IGNORANCE.

Ignorance has always been considered a cause of crime. How much it is so it is difficult to prove by statistics, as the criminal population is not confined to the illiterate class alone. But it will be conceded that ignorance is one of the causes at least that predisposes towards crime.

#### SEC. 225. INTEMPERANCE.

Intemperance is one of the great causes of crime. In the Albany Penitentiary, in 1869-70, out of 1,093 convicts 893 admitted that they were

intemperate. Then consider the number of children of drunken parents who are thrown on the world and almost imperceptibly led into crime, we may have some idea of the crime and criminals that result from this cause. Mr. C. L. Brace, in his book entitled "The Dangerous Classes of New York" says in respect to the growth of intemperance, that a man

Returns to his tenement house after a hard day's work, "dragged out" and craving excitement; his rooms are disagreeable; perhaps, his wife cross, or slatternly, and his children noisy; he has an intense desire for something which can take him out of all this and cause his dull surroundings and his fatigue to be forgotten. Alcohol does it. Moreover, he can bear alcohol and tobacco, to retard the waste of muscle as the sedentary man cannot. In a few steps he can find jolly companions, a lighted and warmed room, newspaper, and above all, a draught, which, for the moment, can change poverty to riches and drive care and labor, and the thought of all his burdens and annoyances far away. The liquor shop is his picture gallery, club, reading room, and social *salon* at once. The glass is the magic transmuter of care to cheerfulness, of penury to plenty, of a life of ignorant, worried life to an existence for the moment buoyant, contented, and hopeful. Alas that the magician who thus, for the instant, transforms him with her rod, soon returns him to his low estate, with ten thousand curses haunting him! The one who is touched by the modern Circe is not even imbruted, for the brutes have no such appetites; he becomes a demonized man; all the treasures of life are trampled under his feet, and he is fit only to dwell "among the tombs." But while labor is what it is, and the liquor shop alone offers sociability and amusement to the poor, alcohol will still possess an overwhelming attraction. The results in this climate, and under the form of alcohol, the stimulus offered here, are terrible beyond all computation. The drunkards' homes are the darkest spots even in the abyss of misery in every large city. Here the hearts of young women are truly broken, and they seek their only consolation in the same magic cup; her children are beaten or maimed, or half starved, until they run away to join the great throng of homeless street rovers in our large towns, and grow up to infest society. From these homes radiate misery, grief, and crime. They are the nests in which the young fledglings of misfortune and vice begin their flight. Probably two thirds of the crimes of every city (and a very large portion of its poverty), come from the over-indulgence of this appetite. As an appetite we do not believe it can ever be eradicated from the human race.

#### SEC. 226. WHAT REMEDY.

As this author has directed much attention to this subject, his remarks are deserving of profound consideration. The inquiry naturally arises, what means should be adopted to remedy the evil of intemperance? Mr. Brace speaks of the efforts made by the total abstinence societies, and after speaking of these, says:

All who study the lower classes are beginning, however, now to look for other remedies of the evil of intemperance.

It has become remarkably apparent, during the last few years, that one of the best modes of driving out low tastes in the masses is to introduce higher. It has been found that galleries, and museums, and parks are the most formidable rivals of the liquor shop. The experience near the Sydenham Palace, in England, and other places of instruction and pleasant resort for the laboring masses, is that drinking saloons do not flourish in opposition. Wherever, in the evening, a laboring man can saunter in a pleasant park, in company with his wife and family look at interesting pictures or sculpture, or objects of curiosity, he has not such a craving for alcoholic stimulus.

Even open-air drinking in a garden—as is so common on the Continent—is never excessive as in an artificial-lighted room. Where, too, a workingman can in a few steps find a cheerfully lighted reading-room, with society or papers, or where a club is easily open to him, without drinking, it will also be found that he ceases to frequent the saloons and almost loses his taste for strong drink.

Whatever elevates the taste of the laborer, or expands his mind, or innocently amuses him, or passes his time pleasantly without indulgence, or agreeably instructs, or provides him with virtuous associations, tends at once to guard him from habits of intoxication. The Kensington Museum, and Sydenham Palace, of London, the Cooper Union, the Central Park, and free reading-rooms of New York, are all temperance societies of the best kind. The great effort now is to bring this class of influences to bear on the habits of the laboring people, and thus diminish intemperance.

It is a remarkable fact, in this connection, that though ninety out of the hundred of our children in the industrial schools are the children of drunkards, not one of the thousands who have gone forth from them has been known to have fallen into intemperate habits. Under the elevating influences of the school they imperceptibly grow out of the habits of their mothers and fathers, and never acquire the appetite.

Another matter, which is well worthy of the attention of reformers, is the possibility

introducing into those countries where heavy drinking prevails the taste for light wines and the habit of open-air drinking. The passion for alcohol is a real one. On a broad scale it cannot be annihilated. Can we not satisfy it innocently? In this country, for instance, light wines can be made to a vast extent, and finally be sold very cheaply. If the taste for them were formed would it not expel the appetite for whisky and brandy, or at least in the coming generation form a new habit?

There is, it is true, a peculiar intensity in the American temperament which makes the taking of concentrated stimulus natural to it. It will need some time for men accustomed to work up their nervous excitement to a white heat by repeated draughts of whisky or brandy to be content with weak wines. Perhaps the present generation never will be. But the laws of health and morality are so manifestly on the side of drinking light wines, as compared with drinking heavy liquors, that any effort at social improvement in this direction would have a fair chance of success. Even the slight change of habit involved in drinking leisurely at a table in the open air with women and children—after the German fashion—would be a great social reform over the hasty bar drinking while standing.

#### SEC. 227. CONCLUDING OBSERVATIONS BY MR. BRACE.

Again the same writer says:

If a student of history were reviewing the gloomy list of the evils which have most cursed mankind, which have wasted households, stained the hand of man with his fellow's blood, sown quarrels and hatreds, broken women's hearts, and ruined children in their earliest years, bred poverty and crime, he would place next to the bloody name of War, the black word INTemperance. No wonder that the best minds of modern times are considering most seriously the soundest means of checking it. If abstinence were the natural and only means, the noble soul would still say, in the words of Paul: "It is good neither to eat flesh nor to drink wine, nor anything whereby thy brother stumbleth."

But abstinence is not thoroughly natural; it has no chance of a universal acceptance; and experience shows that other and wider means must be employed. We must trust to the imperceptible and widely extended influences of civilization, of higher tastes, and more refined amusements, on the masses. We must employ the powers of education, and, above all, the boundless force of religion, to elevate the race above the tyranny of this tremendous appetite.

#### SEC. 228. LOOSENESS OF MARRIAGE OBLIGATIONS.

The dissolution of the marriage tie is, in large cities, one of the fruitful sources of crime. Mr. C. D. Brace says:

It is extraordinary, among the lowest classes, in how large a number of cases a second marriage, or the breaking of marriage, is the immediate cause of crime or vagrancy among the children. When questioning a homeless boy or street-wandering girl as to the former home, it is extremely common to hear, "I couldn't get on with my stepmother," or, "my stepfather treated me badly," or, "my father left, and we just took care of ourselves." These apparently exceptional events are so common in these classes as to fairly constitute them an important cause of juvenile crime. When one remembers the number of happy second marriages, within one's acquaintance, and how many children have never felt the difference between their stepmother and their own mother, and what love and patience and self-sacrifice are shown by parents to their stepchildren, we may be surprised at the contrast, in another class of the community. But the virtues of the poor spring very much from their affections and instincts; they have comparatively little self-control; the high lessons of duty and consideration for others are seldom stamped on them, and religion does not much influence their more delicate relations with those associated with them. They might shelter a strange orphan for years with the greatest kindness, but the bearing and forbearing with the faults of another person's child, year after year, merely from motives of duty or affection to its parent, belong to a higher range of christian virtues, to which they seldom attain. Their own want of self-control and their tendency to jealousy, and little understanding of true self-sacrifice, combine to weaken and embitter these relations with stepchildren. The children themselves have plenty of faults, and have doubtless been little governed, so that soon both parties jar and rub against one another; and as neither have instincts or affections to fall back upon, mere principle or sense of duty is not enough to restrain them. What would be simply slights or jars in more controlled persons, become collisions in this class.

Bitter quarrels spring up between stepson and mother, or stepdaughter and father; the other parent sometimes sides with the child, sometimes with the father, but the result is similar. The house becomes a kind of pandemonium, and the girls rush desperately forth to the wild life of the streets, or the boys gradually prefer the roaming existence of the little city Arab to such a quarrelsome home. Thus it happens that stepchildren among the poor are so often criminals or outcasts.

## SEC. 229. OPIUM HABIT.

One great cause of crime in California is the opium habit. The person addicted to this habit becomes weak and enervated. His moral sense seems to become deadened, and he is easily led into crime. In addition to this, he is compelled, in most instances, to mingle with the criminal and vicious to gratify his appetite. Few but prison officials know how widely spread is this vice through a certain class of youth in our large cities and towns.

## SEC. 230. OTHER CAUSES.

As we said in the beginning, we do not intend to discuss this topic at length; but in addition to the causes we have named, we may say that the existence of a servile labor class—the Chinese—in this country, has had a serious effect. They have driven many of the white race from avenues of employment, and have introduced to the youth of the State some of the most debasing of Asiatic vices, while members of the race form a large part of our criminal population.

The freedom with which melodeons and dives ply their trade, inviting young boys to familiarize themselves with vice, has much to do in making criminals. There are other causes which will occur to us all. It would be highly interesting to scan them all, but the limits of our report are such that we must, with these brief remarks, dismiss the subject.

## CHAPTER XX.

## PROPOSED LEGISLATION.

- SEC. 231. Laws recommended.
- SEC. 232. An Act to establish, regulate, manage, and govern a State Industrial Home for Boys.
- SEC. 233. Continued—Sec. 2.
- SEC. 234. Continued—Sec. 3.
- SEC. 235. Continued—Sec. 4.
- SEC. 236. Continued—Sec. 5.
- SEC. 237. Continued—Sec. 6.
- SEC. 238. Continued—Sec. 7.
- SEC. 239. Continued—Sec. 8.
- SEC. 240. Continued—Sec. 9.
- SEC. 241. Continued—Sec. 10.
- SEC. 242. Continued—Sec. 11.
- SEC. 243. Continued—Sec. 12.
- SEC. 244. Continued—Sec. 13.
- SEC. 245. Continued—Secs. 14, 15.
- SEC. 246. An Act to adopt a parole system.
- SEC. 247. An Act to aid discharged convicts.

## SEC. 231. LAWS RECOMMENDED.

For the purpose of putting some of the views expressed, and suggestions recommended, into a tangible form in the foregoing report, our Secretary has prepared a number of bills which, if enacted into laws, will carry into effect the recommendations we have made.

We do not believe that a prison system can be perfected at once. But there are some things that we very urgently recommend, and these have been embodied in the drafts of Acts which are now submitted.

The improvements so recommended consist of:

1. An Act to regulate, manage, and govern a State Industrial Home for Boys.
2. The adoption of the parole system.
3. An Act to aid discharged prisoners.

## SEC. 232.—SECTION 1.

AN ACT TO ESTABLISH, REGULATE, MANAGE, AND GOVERN A STATE INDUSTRIAL HOME FOR BOYS.

*The People of the State of California, represented in Senate and Assembly, do enact as follows:*

SECTION 1. There shall be established in this State an institution under the name and style of the State Industrial Home for Boys, and the sum of — dollars is hereby appropriated from the General Fund, for purchasing and preparing the grounds, and the erection of suitable buildings therefor, and to pay the current expenses of said Industrial Home.



## SEC. 233. CONTINUED—SEC. 2.

SEC. 2. The general supervision and government of said Industrial Home shall be vested in a Board of five Directors, who shall be appointed by the Governor, by and with the advice and consent of the Senate. The terms of office of the members of said Board shall be as follows: Two for two years, two for four years, and one for six years, from the first day of April, eighteen hundred and eighty-seven, and until their successors shall be appointed and qualified; said respective terms to be designated in their several appointments, and at the expiration of their several terms of office, their successors shall be appointed for the terms of six years each, and until their successors are elected and qualified. The members of said Board of Directors shall constitute a body corporate under the name and style of "The State Industrial Home for Boys," with the right of suing and being sued, of making and using a common seal, and of altering it at pleasure.

## SEC. 234. CONTINUED—SEC. 3.

SEC. 3. The said Board of Directors are hereby empowered to select, procure, and establish with all convenient dispatch a site for said Industrial Home, and the right of way for suitable drainage therefrom, and for that purpose they are also hereby authorized to receive proposals for the donation of lands, money, or building materials, for the location and erection of said Home, on behalf of the State and for the benefit of said institution, provided, that said site shall not contain less than — acres of land, and that good and sufficient titles to any lands thus granted or donated, and securities for the payment of the money and the delivery of the materials donated, in case any such donation be made, shall be obtained by said Board before any such site shall be fully established.

## SEC. 235. CONTINUED—SEC. 4.

SEC. 4. The said Board having established a site for said institution, shall immediately deposit a certificate of their determination, together with all conveyances of land granted, and securities for moneys or materials donated, in the office of the Secretary of State. They shall also prepare and adopt a plan for the grounds, buildings, and fixtures necessary for such institution, of such form, dimensions, and style, and finish, as may seem proper, and as shall come within the cost and limit of the sum hereinbefore appropriated, and may employ an architect at a reasonable compensation.

## SEC. 236. CONTINUED—SEC. 5.

SEC. 5. Said Board of Control shall advertise for proposals for the erection and furnishing of such buildings or parts thereof as may be necessary for the reception, confinement, and discipline of boys, and upon the reception of such proposals they may, in their discretion, make contracts with the lowest responsible bidders, taking into consideration the price, time of performance, and the responsibility of the contractors and their sureties. Said contracts when executed shall be deposited in the office of the Secretary of State.

## SEC. 237. CONTINUED—SEC. 6.

SEC. 6. Said Board shall make out and deliver to the Governor, on or before the first day of November of each year, a report and a detailed statement of their operations and all expenditures made by them during the preceding fiscal year. The members of said Board shall receive no compensation, but shall be allowed their traveling and other expenses incurred while engaged in the performance of official duties, to be audited and allowed by the Board of Examiners and paid out of the appropriations for said institution.

## SEC. 238. CONTINUED—SEC. 7.

SEC. 7. It shall be the duty of the members of the Board of Directors to meet annually at said Industrial Home on the first Wednesday in July of each year, and at said annual meeting they shall elect of their own body a Chairman, and a clerk, who may or may not be of their number. Said officers shall hold their offices for one year, and until their successors shall be elected and qualified. The clerk shall give such bonds as the Board may direct and approve.

## SEC. 239. CONTINUED—SEC. 8.

SEC. 8. It shall be the duty of the Board to meet once every three months, and oftener if deemed advisable. They shall prepare, systematize, and adopt a system of government for said Industrial Home, embracing all such rules, regulations, and general laws as may

be deemed necessary for preserving order, for enforcing discipline, for imparting instruction, for preserving health, and for the proper physical, intellectual, and moral training of the inmates. Said Home shall be conducted on the family or cottage plan. The inmates shall receive such instruction in mechanical pursuits as the Board may deem proper. The said Board shall determine the number of officers and employes that may be required, and shall fix their compensation and prescribe their duties. They shall appoint a Superintendent, who shall hold office for the term of two years, and shall give a bond in the sum of twenty-five thousand dollars for the faithful performance of his duties. All other officers and employes shall be appointed by the Superintendent, and shall hold during his pleasure. The Superintendent shall receive a salary not exceeding two thousand dollars per annum.

## SEC. 240. CONTINUED—SEC. 9.

SEC. 9. For the purpose of maturing said system of government and discipline, it shall be competent for said Board to authorize one of their number to visit some similar institution now in operation, and of the best repute, and by a personal inspection and investigation to acquire an insight into the principles and working of the model system thus selected, for the information and benefit of said Board. The expenses of such member shall not exceed five hundred dollars, and shall be payable out of the fund for the use or support of said institution.

## SEC. 241. CONTINUED—SEC. 10.

SEC. 10. Every male person under the age of sixteen years who shall be convicted before any Court or magistrate of competent jurisdiction for any offense punishable by law, by fine or imprisonment, or both, and who in the opinion of such Court or magistrate would be a fit subject for commitment to the State Industrial School for Boys, except in case of offenses punishable by law with death or with imprisonment for life, may be sentenced by such Court or magistrate to such school, until he shall reach the age of twenty-one years, or until discharged by law, or as in this Act provided. The Board of Directors shall have authority to make rules reducing, as a reward for good conduct, the time for which such persons have been sentenced. It shall be the duty of all Courts and magistrates sentencing boys to said Home, to certify to the keeper of said Home the age of the person so committed, as nearly as can be ascertained by testimony taken under oath before such Court or magistrate, or in such manner as the Court or magistrate may direct.

## SEC. 242. CONTINUED—SEC. 11.

SEC. 11. Before any sentence made by a Police Court or by a Justice of the Peace under this Act shall be executed, it shall be approved by the Judge of the Superior Court of the county in which such Police Court or Justice of the Peace has jurisdiction, and his approval indorsed on the warrant of commitment; and if such sentence shall be disapproved, the Police Court or Justice of the Peace shall have power to pronounce the ordinary sentence pronounced by law.

## SEC. 243. CONTINUED—SEC. 12.

SEC. 12. It shall be lawful for the Board of Directors, whenever in their discretion they may deem any of the inmates of said institution to have been so far reformed as to justify his discharge, to liberate such inmate, or to bind him by articles of indenture to any suitable person who will engage to educate such inmate and to instruct him in some proper art or trade; or said Board may return any such boy to his parents, or other guardians, when they shall have become bound to said Board with sufficient sureties of his good behavior and care; or said Board may place any such boy in the care of any resident of this State who is the head of a family, and of good moral character, but on such terms and conditions as the Board may prescribe.

## SEC. 244. CONTINUED—SEC. 13.

SEC. 13. Any boy who may be found incorrigible, or an improper subject for admission to said institution, may be returned by the Board to the Court or magistrate by whom said boy was committed, or his successor in office; and thereupon such Court or magistrate shall have power to pass such sentence as would have been legal in the first instance if said boy had not been sent to said Home.

## SEC. 245. CONTINUED—SECS. 14, 15.

SEC. 14. It shall be the duty of said Board of Control to provide a book, in which shall be registered the names, ages, and religion professed of the boys received in said Indus-

trial Home, the date of their reception, and of their leaving, the names and residence of their parents, and whether such boys were apprenticed; the name, residence, and occupation of the head of such family, or such person to whom he was apprenticed.

SEC. 15. This Act shall take effect from and after —

#### SEC. 246. AN ACT TO ADOPT A PAROLE SYSTEM.

AN ACT TO AMEND SECTION TWENTY-THREE OF AN ACT ENTITLED "AN ACT TO DEFINE, REGULATE, AND GOVERN THE STATE PRISONS OF CALIFORNIA," APPROVED APRIL FIFTEENTH, EIGHTEEN HUNDRED AND EIGHTY.

*The People of the State of California, represented in Senate and Assembly, do enact as follows:*

SECTION 1. Section twenty-three of an Act entitled "An Act to define, regulate, and govern the State Prisons of California," approved April fifteenth, eighteen hundred and eighty, is hereby amended so as to read as follows:

Section 23. The State Board of Prison Directors shall require of every able-bodied convict confined in a State Prison as many hours of faithful labor in each and every day during his term of imprisonment as shall be prescribed by the rules and regulations of the prison. Every convict who shall have no infraction of the rules and regulations of the prison or laws of the State recorded against him, and who performs in a faithful, orderly, and peaceable manner the duties assigned to him, shall be allowed from his term instead and in lieu of the credits heretofore allowed by law, a deduction of two months in each of the first two years, four months in each of the next two years, and five months in each of the remaining years of said term, and pro rata for any part of a year, when the sentence is for, or more or less than a year. The mode of reckoning credits shall be as shown in the following table:

Number of Years of Sentence.	Good Time Granted.	Total Good Time Made.	Time to be Served if Full Term is Made.
1st year .....	2 months .....	2 months .....	10 months .....
2d year .....	2 months .....	4 months .....	1 year and 8 months .....
3d year .....	4 months .....	8 months .....	2 years and 4 months .....
4th year .....	4 months .....	1 year .....	3 years .....
5th year .....	5 months .....	1 year and 5 months .....	3 years and 7 months .....
6th year .....	5 months .....	1 year and 10 months .....	4 years and 2 months .....
7th year .....	5 months .....	2 years and 3 months .....	4 years and 9 months .....
8th year .....	5 months .....	2 years and 8 months .....	5 years and 4 months .....
9th year .....	5 months .....	3 years and 1 month .....	5 years and 11 months .....
10th year .....	5 months .....	3 years and 6 months .....	6 years and 6 months .....

And so on through as many years as may be the term of the sentence. Each convict shall be held entitled to these deductions, unless the Board of Directors shall find him guilty of misconduct or other cause he should not receive them. But if any convict shall commit any assault upon his keeper, or any foreman, officer, convict, or person, or otherwise endanger life, or shall be guilty of any flagrant disregard of the rules of the prison, or commit any misdemeanor, or in any manner violate any of the rules and regulations of the prison, he shall forfeit all deductions of time earned by him for good conduct before the commission of such offense, or that under this section he may earn in the future, and shall forfeit such part of such deductions as to the Board of Directors may seem just. Such forfeiture, however, shall be made only by the Board of Directors after due proof of the offense, and notice to the offender; nor shall any forfeiture be imposed when the party has violated any rule or rules without violence or evil intent, of which the Directors shall be the sole judges. The Board shall have power to restore credits forfeited, for such reasons as by them may seem proper.

The State Board of Prison Directors of this State shall have power to establish rules and regulations under which any prisoner who is now or hereafter may be imprisoned under a sentence other than for murder in the first or second degree, who may have served one calendar year of the term for which he was convicted, and who has not previously been convicted of a felony and served a term in a penal institution, may be allowed to go upon parole outside of the buildings and inclosures, but to remain while on parole in the legal custody, and under the control of said Board of Directors, and subject at any time to be taken back within the inclosure of said prison; and full power to make and enforce such rules and regulations, and to retake and imprison any convict so upon parole is hereby conferred upon said Board of Directors, whose written order, certified by the President of said Board, shall be a sufficient warrant for all officers named therein, to authorize such officer to return to actual custody any conditionally released or paroled prisoner; and it is hereby made the duty of all Chiefs of Police and Marshals of cities and villages, and the Sheriffs of counties, and of all police, prison, and peace officers and

constables, to execute any such order in like manner as ordinary criminal process. If any prisoner so paroled shall leave the State, he shall be held as an escaped prisoner, and arrested as such.

SEC. 2. This Act shall take effect immediately.

#### SEC. 247. AN ACT TO AID DISCHARGED PRISONERS.

AN ACT TO AMEND SECTION SIX OF AN ACT ENTITLED "AN ACT TO DEFINE, REGULATE, AND GOVERN THE STATE PRISONS OF CALIFORNIA," APPROVED APRIL FIFTEENTH, EIGHTEEN HUNDRED AND EIGHTY.

*The People of the State of California, represented in Senate and Assembly, do enact as follows:*

SECTION 1. Section six of an Act entitled "An Act to define, regulate, and govern the State Prisons of California," approved April fifteenth, eighteen hundred and eighty, is hereby amended so as to read as follows:

Section 6. The Board of Directors shall have power to establish an office in San Francisco, and to employ a Secretary and fix his compensation. They shall have power to appoint an agent for discharged convicts, to prescribe his duties, and fix his compensation; provided, that his salary shall not exceed eighteen hundred dollars per annum. He shall hold office at the pleasure of the Board, and they may, in addition to his salary, allow him a reasonable amount for traveling expenses and for aiding worthy discharged prisoners. His salary, expenses, and other allowances shall be paid in the same manner and from the same fund as other claims against the prison, but such expenses and allowances, exclusive of his salary, shall not exceed two thousand dollars per annum.

SEC. 2. This Act shall take effect immediately.

## CHAPTER XXI.

## CONCLUDING OBSERVATIONS.

SEC. 248. Scope of report.

SEC. 249. Acknowledgments.

SEC. 250. Adoption of report.

## SEC. 248. SCOPE OF REPORT.

In the foregoing pages we have endeavored to go over the whole field, or nearly the whole field of penology, as applicable to our condition. We have attempted to collate material which we trust will be of advantage in the solution of the many different problems connected with this vastly important subject. We have not assumed the role of fault-finders or visionaries, but as practical men have endeavored calmly to consider all that might be urged either in behalf of or against our present system.

## SEC. 249. ACKNOWLEDGMENTS.

We are under a deep load of obligation to your Excellency for the keen interest which you have always taken in our labors. You have attended several of our meetings, and have made to us valuable suggestions, some of which are engrafted in the foregoing report. You have acted on the theory that the prison system of a State is one of its most important departments, and that anything that could be devised to effect the reformation of the prisoner, and restore him to society, an honest and industrious citizen, was deserving of the highest consideration. If our labors shall result in aught that is wise and beneficial, you deserve a large share of the credit, for the counsel and assistance with which you have ever favored us. In this department of the government, your whole course in making the prisons of the State non-partisan, and attempting, so far as lay in your power, to have them managed in accordance with the most approved views of penological science, entitle you to say that you have not acted as a selfish politician, but as an earnest and patriotic statesman.

To the press of the State, which, in the main, has appreciated the importance of the topics investigated by the Commission, and whose assistance has been invaluable in calling public attention to many of the measures advocated, our thanks are due.

And to those ladies and gentlemen who have favored us with their views, we desire to say that we are grateful to you for your kindness.

## SEC. 250. ADOPTION OF REPORT.

The foregoing report was prepared by the Secretary, Mr. Devlin, and, after several modifications and amendments, was finally adopted, at a meeting of the Commission held at the Palace Hotel, San Francisco, December 6, 1886. In all the recommendations made by the Commission as to legislation, the members unanimously concurred. In all other matters there was unanimous concurrence, save on the topic of indeterminate sentence. On this subject Mr. Hendricks differed from some of the views expressed by the Commission in the chapter on "Indeterminate Sentences." His views will be found in his report made to the Board, and which, by the permission of the Board given at this meeting, he will issue as a separate document. But the foregoing is now submitted to you as the report of the Commission.

Very respectfully submitted.

W. C. HENDRICKS, President,  
ROBT. T. DEVLIN, Secretary,  
CHAS. SONNTAG,  
JOHN BOGGS,  
JAMES H. WILKINS,  
Penological Commissioners.

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## APPENDIX.

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## CORRESPONDENCE.

The Secretary has ever since the organization of the Commission been in correspondence with persons from whom it was expected that information might be gleaned of value to the Commission. Quotations have been taken from some of these letters in treating of particular subjects. For the purpose of showing the interest taken throughout the world in subjects of the character forming our report and of presenting the views of those whose opinions are entitled to high consideration and our efforts to obtain such views, we subjoin some of the most important replies received in answer to these letters of inquiry.

We desire in this place to return our thanks to those who have been kind enough to furnish us with their views on the topics concerning which information was sought.

BOYS' LODGING HOUSE, OF THE CHILDREN'S AID SOCIETY, }  
314 EAST 35TH ST., NEW YORK, March 27, 1886. }

Mr. ROBERT DEVLIN, *Secretary*:

DEAR SIR: It would be a pleasure to me, if I could in any way aid you in your undertaking. But my experience is with another class—homeless boys. We help, by giving them home comforts, and charging 5 cents a meal, and 5 cents for a clean bed. Hot and cold baths and washing free.

We urge them to learn a trade, and send those who we think are suitable, to homes on farms. We use only moral suasion. If a boy has no money we trust him, so we try to make them self-reliant and independent. We pay them 5 cents a month interest on all money they save, up to \$20. We have books, and a large pleasant room; five months in the year night school, that all must attend unless they are at work. Sunday evenings a short, lively, practical talk, and singing.

Kindness, but firmness, patience, and a real interest in helping these boys. Let them understand that you know them, and knowing them you desire to help them help themselves. Never give or allow goody talk; give them open, honest, hearty talk if you must talk to them. Let them feel free to come to you and talk, but all complaints must be made in the presence of the person or thing complained of. And then be *just*. If you blame a boy wrongfully, acknowledge it, and ask his pardon.

I am simply giving you the outline of my way of doing for the past seven years.

I find that some boys *will* be criminals. They choose to be. Many would gladly live honest lives if they could have work and earn wages to pay their way. The cause of many going astray is the small pay. Boys

from sixteen to twenty in this city are receiving from \$3 to \$4 a week. is *unjust*, and injustice is the cause of most of the crime. And the makers and Christian business men are to blame. In their hurry to get rich they *rob* the poor. And most organized charity is a humbug and fraud. If the working men were paid fair wages, two thirds of all the efforts made to help the poor and the fallen, could be swept away, and instead of building up a huge system of pauperism and mission hypocrisy this land of ours could be the home of prosperous families.

Pardon me, but I feel deeply on this subject. These are simply my views.

Respectfully,

WM. H. MATHEWS.

DEPARTMENT OF JUSTICE,  
WASHINGTON, D. C., March 27, 1886.

ROBERT T. DEVLIN, *Esq.*, *Sacramento, California*:

SIR: Your favor of the twentieth has been received. I do not know that I will have time in the midst of so many things claiming my attention to do what you request, but I will see if I can, and make every effort to do so, and if I do not send you anything, it will be simply because I have not the time to do it. I assure you I have the inclination.

Very truly, etc.,

A. H. GARLAND.

Mr. Garland subsequently sent us reports of his Department, in which mention is made of the care of United States prisoners.

TREASURY DEPARTMENT,  
WASHINGTON, March 27, 1886.

ROBERT T. DEVLIN, *Esq.*, *Secretary California State Penological Commission*:

SIR: I write to acknowledge the receipt of your communication of the twentieth instant, addressed to the Secretary, asking for an expression of his views as to the best methods of reforming youthful criminals, etc. Owing to the illness of the Secretary an early reply to your communication is not probable.

Respectfully yours,

THOS. J. BRENNAN, *Private Secretary*.

POST OFFICE DEPARTMENT, OFFICE OF THE POSTMASTER GENERAL,  
WASHINGTON, D. C., March 27, 1886.

ROBERT T. DEVLIN, *Esq.*, *Secretary, Sacramento, Cal.*:

DEAR SIR: Your favor of the twentieth is received, and I regret that the pressure of my public duties do not afford me the time to sufficiently consider and express my views upon the interesting subject upon which you write.

Very truly yours,

WM. F. VILAS.

R. HOE & CO., PRINTING PRESS, MACHINE, AND SAW  
MANUFACTURERS, NEW YORK, March 29, 1886.

DEAR SIR: Your esteemed favor of the twentieth instant is received, but should have been addressed to my uncle, Mr. Richard M. Hoe, who has

been for many years connected with the House of Refuge on Randall's Island, and other similar institutions. Unfortunately he is at present in Europe, the time for his return being uncertain, but your letter will be handed to him.

Yours, very truly,

ROBERT HOE.

ROBERT T. DEVLIN, *Esq.*, *California State Penological Commission, Sacramento, Cal.*

NEWSBOYS' LODGING HOUSE, }  
NO. 9 DUANE STREET, NEW YORK, March 29, 1886. }

DEAR SIR: I beg leave to acknowledge the receipt of your letter of the twentieth, and regret exceedingly that I cannot reply to your letter at full length, for I am confined to my bed. I know of no one so familiar with the subject, or more capable of giving you the information you ask for, as Mr. Charles L. Brace, Secretary of Children's Aid Society, 27 St. Mark's Place, New York City.

Respectfully yours,

CHARLES O'CONNOR.

ROBT. T. DEVLIN, *Esq.*

CHILDREN'S AID SOCIETY, 24 ST. MARK'S PLACE, }  
EIGHTH STREET, BET. SECOND AND THIRD AVENUES, }  
NEW YORK, March 29, 1886. }

ROBERT T. DEVLIN, *Esq.*, *Secretary, etc.*:

MY DEAR SIR: Your favor of March twentieth was received. In reply I beg leave to refer you to my work, "The Dangerous Classes of New York," and the last annual report of the Children's Aid Society, copies of which I take pleasure in sending you, and which give my views on the subject you have under consideration. The indeterminate sentence, as carried out at the Elmira Reformatory, I have carefully examined and consider the system excellent, and the institution itself is certainly superior to any institution of its kind in this country, and equal to any abroad. Trusting this will be satisfactory, believe me, dear sir,

Yours, very truly,

C. L. BRACE, *Secretary*.

HOUSE OF REPRESENTATIVES, UNITED STATES, }  
WASHINGTON, D. C., March 27, 1886. }

ROBERT T. DEVLIN, *Esq.*, *Secretary*:

DEAR SIR: Your letter received. I have not made any special study of the subject about which you write, and my opinion would, therefore, be of small value.

I advise you to write to the Managers of the Eastern Penitentiary, Philadelphia, Pennsylvania.

Yours, truly,

SAM. J. RANDALL.



ILLINOIS STATE PENITENTIARY, WARDEN'S OFFICE,  
JOILET, ILLINOIS, April 1, 1886.

R. T. DEVLIN, *Sacramento City, California*:

Hon. John A. Logan, of the United States Senate, has referred to me your letter to him of March thirtieth, and has asked me to reply to the same. I am now preparing answers to a series of printed questions, proposed by your Commission through Mr. Hendricks; as they will cover all the points suggested in your letter, I will refer you to them as my reply.

Respectfully,

R. W. McLAUGHEY, Warden.

SENATE CHAMBER, WASHINGTON, March 31, 1886.

DEAR SIR: I have yours of the twentieth instant. The pressure upon my time is so great that it is impracticable for me to express at large my views on the subject of the reformation of youthful criminals, or what is proper to be done for the welfare of discharged prisoners. I should, however, think it to be clear as to juvenile offenders that kind treatment, steady discipline, regular work and instruction, both ordinary and moral, must be the fundamental means of reformation.

And for discharged prisoners, it seems obvious to me that what they need most is opportunity for honest labor. In haste.

Sincerely yours,

GEO. F. EDMUNDS.

ROBERT T. DEVLIN, *Esq., Sacramento, Cal.*

UNITED STATES SENATE,  
COMMITTEE ON FOREIGN RELATIONS, April 7, 1886.

Mr. ROBERT T. DEVLIN, *Secretary California State Penological Commission, Sacramento, Cal.*:

DEAR SIR: I regret very much that the pressure of public business at present will prevent me from replying to the questions submitted in your favor of the twenty-seventh ultimo.

I have, however, asked General R. Brinkerhoff, of Mansfield, Ohio, a gentleman who has made these matters a life-long study, to answer for me. I hope that you will soon hear from him.

Very truly yours,

JOHN SHERMAN.

STATE OF IOWA, EXECUTIVE OFFICE,  
DES MOINES, April 9, 1886.

ROBT. T. DEVLIN, *Esq., Secretary California State Penological Commission, Sacramento, California*:

DEAR SIR: The Governor instructs me to acknowledge the receipt of your favor of the third instant, and to inform you that it has been referred to Major G. W. Crosley, Warden of the State Penitentiary, who will, in behalf of the Governor, make a full reply to your inquiries.

Very respectfully,

FREDERICK W. HOSSFELD,  
Private Secretary.

UPSON, WALTON & Co., 159, 161, AND 163 RIVER STREET,  
CLEVELAND, OHIO, April 8, 1886.

ROBERT T. DEVLIN, *Esq., Secretary California State Penological Commission, Sacramento, California*:

DEAR SIR: Your kind request for my views on the subject of the reformation of youthful criminals, and of the care of and aid to discharged convicts, merits greater consideration than my pressure of business cares at present leaves me time to devote to it. I will endeavor to put some thoughts on paper within the next month, however; only premising that the man who can thoroughly solve these two problems is "coming," but has not yet arrived.

Respectfully,

J. W. WALTON.

HAYESVILLE, OHIO, April 7, 1886.

R. T. DEVLIN, *Esq., Secretary Penological Commission, Sacramento, Cal.*:

DEAR SIR: Your favor was received a week ago, but in reply am sorry that I am not in possession of any information that would greatly benefit your cause and Commission. Our county is not a large and populous one, neither are there any large towns in it, so my experience as a member of the visiting committee would not be as great as those of some of the larger and more densely populated counties in our State. I served as Sheriff four years, and have had some practical experience with prisoners. There should be in every prison ample means for keeping the younger prisoners separate from the older and more hardened ones. Also, I think, those charged with high crimes and those charged with minor offenses should not be permitted to mingle together nor communicate with each other. We have in our State a system of reform schools which I think are doing a good work. The "Reform Farm," near Lancaster, Ohio, is a place where any boy who is not over sixteen nor under ten may be sent, on complaint of his parent, guardian, or next friend, when, on the sworn statement of two respectable witnesses, it is shown that he, by reason of his incorrigible or criminal conduct, is beyond the control of such parent, guardian, or next friend, and that from regard to his future welfare, and the protection of society, he should be placed under restraint; also, any such youth convicted of any crime or offense may, at the discretion of the Court giving sentence, in lieu of being sent to jail or penitentiary, be sent to the Reform School.

We are now trying a system of paroling convicts out of the penitentiary, which I think is likely to have a beneficial influence in the way of reformation. It puts the prisoner in a position where, by his good conduct, he not only gains his release from prison, but also starts on the road to honor and reputation as a citizen. I have no printed matter bearing on the subject that would in any way benefit you. Would advise you to write to General Brinkerhoff, Mansfield, Ohio. He has been devoting some attention to prison reform in our State. He is a man of intelligence, and could, perhaps, give you some useful information.

I was in your beautiful city frequently during the years 1855, 1856, 1857. Am a great friend of California, and always delighted to hear from the Golden State. The man who has worked for me the last two years went to California last month, and is well pleased with the country.

Please let me hear from you again. Any information in my possession will be given cheerfully when requested.

I remain, yours, truly,

WM. O. PORTER.

GIRLS' LODGING HOUSE, UNDER CARE OF CHILDREN'S AID SOCIETY  
27 ST. MARK'S PLACE, NEW YORK, April 1, 1886.

ROBERT T. DEVLIN, Esq.:

DEAR SIR: As the Girls' Lodging House is not intended for criminals but only for the protection and guidance of young girls who have crossed the line between simple folly and vice, yet who greatly require and sometimes restraint, I have no experience which would be of any value in your good work. I always send fallen girls to the reformatories provided for their care; such as the "Midnight" or "Florence" Mission, the "W. more Home," or the "Hopper Home."

Very respectfully,

E. S. HURLEY, Matron

STATE OF ILLINOIS BOARD OF PUBLIC CHARITIES  
SPRINGFIELD, April 12, 1886.

Hon. ROBERT T. DEVLIN, Secretary State Penological Commission, Sacramento, California:

MY DEAR SIR: Governor Oglesby requests me to acknowledge the receipt of your favor of the third instant, and to make his apologies for not replying to it, as the labor troubles in this State occupy all his attention at the present moment, and he has no time at his command for framing satisfactory answers to your inquiries as their importance properly demands.

I sent, on my own account, to Mr. Hendricks, last week, replies to the printed questions. Those in your letter present more difficulty. If you care for my opinion, I would say:

1. At productive labor, under some system.
2. The Constitution lodges the pardoning power in the Governor, and he cannot be deprived of it, nor should he be. A Pardoning Board may aid him in investigating applications for pardon, where circumstances indicate its desirability. It is not always desirable.
3. Youthful criminals should never be confined in the State Prison.
4. The parole system has shown itself to be practicable at Elmira, New York. It implies the existence of a truly reformatory discipline in prison. Where this is lacking, I should doubt its practicability.
5. The best form of aid to discharged prisoners is by voluntary association of benevolent men and women, disconnected with the government. This form of aid has made but slight progress in this country, however, and to encourage it some subsidy from the State Treasury appears to be essential. A fund disbursed directly by State officials does not appear to give the best results. With the indeterminate sentence, a graded prison, and conditional liberation, the difficulty of finding employment for discharged prisoners is reduced to a minimum.

I am, with respect, sincerely yours,

FRED. H. WINES

BISMARCK, April 14, 1886.

ROBERT T. DEVLIN, Secretary California State Penological Institute, Sacramento, Cal.:

DEAR SIR: I have your letter of April second, inquiring as to certain matters connected with the reformation of criminals, and prison management in general.

In reply to your first inquiry, to wit: How should prisoners be employed? I have to say that, while my experience is not such as to make me familiar with the best methods for the employment of convicts, yet, in my opinion it is of the utmost importance that they be kept employed at some kind of labor; it is far more necessary for their own welfare, than it is for the welfare of the community or the State. Idleness is even more demoralizing to persons confined, than to those at large; and the old adage "that the devil finds mischief" for such persons, has been long since proven true. We keep our convicts engaged upon a variety of work; but of course it is better that they should learn some trade whereby they can obtain an honest livelihood when their prison life is over.

In reply to your second inquiry, as to the pardoning power, my own experience leads me to believe that a Board of Pardons should be constituted, the membership of which should be selected by the Governor, and of which, possibly, he should be a member *ex officio*. There is much more in this question than I have time now to discuss; but nothing connected with prison management is of such vital consequence to the enforcement of justice as this. The Board ought to be a Board of Inquiry as well as a Board of Pardons; the Board authorized and directed to investigate, at stated periods, the condition of the prisoners, their crimes, degree of punishment, capacity for endurance, etc. One year's imprisonment to some men is a severer trial than a lifetime to others, and I am quite confident that many of the most deserving cases for executive clemency never come before the Governor—it being with prisoners as with persons in need of charity: assurance comes to the front, while modesty and suffering remain in retirement. I am often greatly impressed with the insufficiency of the law as it is usually administered in the matter of pardons, for I do not doubt that even in this Territory there are, to-day, a score or more of prisoners the particulars of whose cases have never reached me, and yet who are wrongfully suffering imprisonment in our penitentiary. The multitude of duties which press upon the executive officers of the various States, necessarily prevents that inquiry and scrutiny which the possibilities of wrong demand should be given such matters. Therefore, a Board, well paid and fully empowered to investigate these questions, is advisable.

In regard to the parole system, I cannot speak from experience; theoretically, however, I am inclined to favor it, especially in the newer communities. There are objections, of course, to the system, which are as familiar to you as to myself.

In reply to the fourth inquiry, I would say that by all means, separate the youthful and the confirmed criminals; or rather, separate the confirmed criminals and those who are new to crime.

To your last inquiry, as to the State extending aid to discharged prisoners, I should say that under certain restrictions, and if exercised with great care and judgment, that this might be done to advantage.

I am, very respectfully, your obedient servant,

GILBERT A. PIERCE.

COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE DEPARTMENT,  
BOSTON, April 13, 1886.

Mr. ROBERT T. DEVLIN, Cor. Fourth and J Streets, Sacramento, Cal.:

DEAR SIR: The Governor directs me to acknowledge the receipt of your communication, and to say that he has referred it to the Commissioners of

Prisons, Hon. Thomas Parsons, Chairman, with a request that they  
 nish you with such documents as will convey the information desired.  
 I am, very respectfully,

SAMUEL J. MENARD,  
 Private Secretary

STATE OF MISSOURI, EXECUTIVE DEPARTMENT,  
 CITY OF JEFFERSON, April 17, 1886.

Mr. ROBERT T. DEVLIN, *Sacramento, Cal.*:

SIR: Yours of the twelfth was received this morning. Governor  
 maduke is away and will not return for some days. I have referred  
 letter to the Warden of our State Penitentiary, who is competent to answer  
 all your questions, unless it be the one referring to where the pardoning  
 power should be lodged.

Very truly yours,

V. C. YANTIS, Private Secretary

STATE OF KANSAS, EXECUTIVE DEPARTMENT,  
 TOPEKA, April 13, 1886.

ROBERT T. DEVLIN, *Esq., Sacramento, California*:

DEAR SIR: I can answer your letter of April fifth by sending you  
 copy of my last special message to the Legislature, and forwarding also  
 report of the Reformatory Commission of this State. I send you these  
 accompanying mail. I think they will fully answer the inquiries you  
 make.

Yours, very respectfully,

JNO. N. MARTIN

STATE OF CONNECTICUT, EXECUTIVE DEPARTMENT,  
 HARTFORD, April 9, 1886.

ROBERT T. DEVLIN, *Esq.*:

DEAR SIR: Your letter of the second instant is at hand. Hon. Frank  
 Wayland, President of the Trustees of State Prisons, is eminently qualified  
 (as I am not) to give valuable answers to your questions, by reason of the  
 fact that he has for many years made the subject of prison discipline  
 study, practically, as well as theoretically. I will refer your letter to him  
 with the request that he shall answer it. His answer will be delayed by  
 his absence (for three or four weeks) from the State.

Very respectfully,

HENRY B. HARRISON

AUGUSTA, MAINE, April 29, 1886.

DEAR SIR: I would have promptly answered your favor if I had pro-  
 cesses any information of value to your inquiry.

A quarter of a century ago I took some active part in matters relating  
 to prison discipline in this State, but the whole system has been so advanced  
 since then that anything I should now be able to communicate would be  
 relatively valueless.

By writing to the reformatory institutions of the Eastern States, etc.

have no doubt you have already done, you will receive in printed form  
 much valuable information on the subject of your inquiry.  
 Thanking you for the compliment implied in your letter, I am, with  
 great respect,  
 Your obedient servant,

JAMES G. BLAINE.

To ROBERT T. DEVLIN, *Sacramento, Cal.*

SENATE CHAMBER, WASHINGTON, April 12, 1886.

DEAR SIR: Your note of the twenty-seventh ultimo was duly received.  
 I have not studied the subject of prison labor, and, therefore, my opinion is  
 worth nothing. My townsman, General R. Brinkerhoff, Mansfield, Ohio,  
 is an expert in it. He writes me that he has furnished to Mr. Hendricks  
 all the information he has upon the subject, and that Mr. Hendricks also  
 examined the prison at Columbus; so that he could communicate no further  
 information to you.

Very truly yours,

JOHN SHERMAN.

ROBERT T. DEVLIN, *Esq.*

STATE OF ILLINOIS, EXECUTIVE OFFICE, }  
 SPRINGFIELD, April 12, 1886. }

ROBERT T. DEVLIN, *Esq., Sacramento, Cal.*:

DEAR SIR: In reply to yours of the third instant, am compelled to state  
 that I have not the leisure to enter upon a discussion and examination of  
 the various subjects propounded in your letter in regard to prison disci-  
 pline, pardoning power, etc.

I have referred your letter to Rev. F. H. Wines, Secretary of our State  
 Board of Public Charities, who may communicate with you should you  
 desire his views.

Very respectfully,

R. J. OGLESBY.

EXECUTIVE DEPARTMENT, COMMONWEALTH OF PENNSYLVANIA, }  
 OFFICE OF THE GOVERNOR, HARRISBURG, May 4, 1886. }

ROBERT T. DEVLIN, *Esq., Sacramento City, Cal.*:

MY DEAR SIR: In reply to your favor, already acknowledged, I beg  
 leave to send you the accompanying answers to the questions you sub-  
 mitted, and also copies of my own inaugural address and message, in  
 which you will find some points to which I desire to call your attention.  
 Trusting this matter may be useful to you for the purpose you allude to;

I am, my dear sir, your obedient servant,

ROBERT E. PATTISON.

1. *Prison labor* is but a means to an end. It is made an element in  
 punishment, not solely an industry. Prisoners incarcerated are there to  
 be punished for their crimes. Labor is to be used to excite or induce  
 habits of industry, and thereby fit the convict for his return to society,  
 enabled, from the teachings in prison, to earn a livelihood. The "contract  
 convict labor" in prison is abolished by the law of Pennsylvania. The

State has made laws to regulate the sale of products made by convict prison, so that no injustice be done to any producer. The congregating convicts, at labor in shops, is not the system at the Eastern State Penitentiary, at Philadelphia. There, each convict is separated from others. In his room he works and sleeps and eats. The system there operation is now best described by the name of "*the individual treatment system*." It is not a solitary plan—never was. It was called "*the separate system*," but late advances in prison experience has given the title individual treatment. Each convict is treated as his character and conditions, as well as his crime-cause, needs. There is no rule applied to a class. Each convict is subjected to that discipline best suited to individual case.

2. In Pennsylvania the power to pardon by the State Constitution is vested in the Governor. A Board of Pardons, consisting of the State officers (Lieutenant-Governor, Attorney-General, Secretary of Internal Affairs, and Secretary of State), recommend pardons to the Governor who thereupon, if he sees fit, pardons the crime of the convict. This system has received the approval of the people of the State.

3. Young offenders, who are not incorrigible and vicious inherently, should, for first violation of law less than high crimes, be sent to trade schools. The State should establish such an institution, in which restraint, incarceration, or forcible detention should not be adopted. The school should afford the inducement to stay. If in cases of incorrigible or vicious characters, then a trade school should receive such inmates by commitment from a legal authority. Then young delinquents should not be sent to a jail or prison.

4. The State should give to each discharged prisoner a sum sufficient to pay his expenses to his home. In this State \$5 is given to each prisoner whose home is fifty miles from the penitentiary at Philadelphia, and less over that distance. Other money would not be judicious if the penitentiary is near a large city.

5. There is no solitary enforcement in Pennsylvania, as answered under question 1. It is the accepted opinion that congregating convicts in prison in a mass, or in shops, so that association is the rule, is injurious both to the convict and society.

In further answer to your questions, I have directed some publications to be sent to you on the subjects to which your interrogations refer. They will more fully explain these subjects than is within the scope of this letter.

COMMONWEALTH OF PENNSYLVANIA,  
BOARD OF PUBLIC CHARITIES, OFFICE OF EXECUTIVE COMMITTEE,  
1224 CHESTNUT STREET, PHILADELPHIA, April 26, 1886.

HON. ROBERT E. PATTISON:

MY DEAR SIR: Your favor of the twenty-third instant is received, including a letter from the Secretary of the California State Penological Commission, making certain inquiries, as to which you are good enough to ask for "conclusions in brief." I give these with great pleasure, so far as I have formed them, feeling bound at the same time to say that I regard some, but not all, of them as still open questions upon which more light is needed.

1. The contract system of prison labor is liable to serious objections, the score of difficulty in administering discipline, if on no other. It cannot be profitably enforced, probably, under the separate system of imprisonment. I have no doubt that the plan known of late as the "piece-price

plan is the best devised, the prison thus entirely controlling its own discipline, and contracting to sell the products of its labor by the piece.

2. As to the pardoning power, if it were possible to place it in the hands of the convicting Court, to be exercised only for special cause, such as new light on the case, or mitigating circumstances not previously known to the Court, it would seem to me the more certain way of securing pardons from improper or inadequate motive. After that, I would place a Pardon Board, properly constituted. Of course, nothing is better than a thoroughly independent, honest, and dispassionate Governor. But in view of the uncertainty of always securing those rare qualities, the Pardon Board ought to be constituted of those whose appointment is not in the Governor's hands, and their power exercised through recommendations to the Governor.

3. As regards youthful criminals, punitive measures of the nature of incarceration should not be applied to children under sixteen years, who should be placed in reform schools, such as at Morgantown, Pennsylvania, Lancaster, Ohio, and Plainfield, Indiana. It is fairly to be presumed they can be educated out of their early vices. Youths over sixteen, committing their first offense, require the intermediate prison or reformatory, of which that at Elmira is the best type; and I hope our own at Huntingdon will equal it. The details of their management can be obtained by a perusal of Mr. Brockway's reports. These, and other pamphlets and works on penological subjects, I will be happy to forward to Mr. Devlin, should you desire it. It does not appear to me that any of this class of offenders should be brought in contact with old offenders during their detention. They should therefore never be sentenced to a common jail.

4. The question, "What aid should be given to discharged prisoners?" is a difficult one to answer. That this is one of the most crying needs to prevent recommitments, may safely be alleged. In England, they have a system of surveillance for a term of months, by the police, to whom the discharged prisoners must report once a month, and who keep an eye on them. This is said to be a success, yet it is not exactly what is wanted. Mr. Brockway obtains situations for his released prisoners before their discharge, and they remain, on parole, under his control for six months. But this is much easier of accomplishment with his class of inmates than discharged convicts from a penitentiary. Either a voluntary association, such as the Pennsylvania Prisoners' Aid Society, assisted, if necessary, by State appropriation, or a State Agent, whose sole function should be to aid discharged prisoners to secure employment and avoid a relapse into crime, would be better than any other plan yet devised.

5. The separate or Pennsylvania system of imprisonment, while it has disadvantages peculiar to a solitary life, I believe, on the whole, to be more effectual, both in punishing and reforming prisoners, than the congregate system. I think its spread has been mainly prevented by two charges: (1.) That it produced lunacy; (2.) That it was expensive, because economic systems of labor could not be applied to it. I am not absolutely clear as to the first allegation, but a comparison of the accounts of our Eastern Penitentiary with the Western, where the congregate system is in use, does not sustain the second, and I presume the disparity will be still greater in favor of the separate system under the recent law abolishing contract prison labor in this State.

I am quite sure that separate confinement is best and highly important

in all common jails. Should you wish more detailed information, please command me.

Yours faithfully,

I return Mr. Devlin's letter.

PHILIP C. GARRETT

EXECUTIVE OFFICE, NASHVILLE, TENN., April 30, 1886.  
Mr. ROBT. T. DEVLIN, *Commissioner California State Penological Commission, Sacramento, Cal.:*

DEAR SIR: I have received your letter of a few days since, in which you ask my opinion in response to certain questions therein propounded with reference to prison management. In reply I have to say that upon some of the questions propounded there is such a great variance of opinion throughout the country—both sides of certain propositions being argued with such apparent plausibility—that I hardly feel able to give a very definite opinion.

As to the question: "What system is the best?" I would say that, in my opinion, the lease system, under the present law and contract (aside from a consideration of the revenue collected from the lessees) is the best system of prison government put into operation since the opening of our penitentiary, on January 1, 1831. The penitentiary was managed exclusively by the State from its opening until 1866, excepting the war period; from 1866 to 1870 under what may be termed a quasi lease system; and, with a short interim in 1870, to this time, under a lease system similar to the one now in force. Up to 1870 there were deficits paid out of the Treasury on account of the penitentiary, amounting to over \$1,000,000. Since that date large revenues have been received into the Treasury every year, and these revenues now amount to \$101,000 annually, on a contract for six years. But the question of revenue would be entitled to but little consideration if it were true that the lease system subjects the prisoners to unkind or inhuman treatment. On the contrary, it is believed that the convicts are in better health and condition generally than under former systems. The penitentiary property and the labor of the convicts is leased at so much a year; but the control and supervision of the whole is retained in the hands of State officials, whose duty it is to see that the convicts are well fed with good, substantial, and wholesome food; that they have good bedding and good medical attention, and are treated humanely and not overworked. The best physicians are regularly employed, and hospitals are maintained for the sick. The Secretary of State, Controller, and Treasurer constitute a Board of Inspectors; and the Superintendent of Prisons, Wardens, Deputy Wardens, Physicians, and Chaplains are appointed by the Governor and paid by the State. About five hundred and fifty convicts are kept at the main prison at Nashville, employed principally in the manufacture of wagons, and the remainder are at several different points in the State, engaged chiefly in mining and quarrying. The law limits work to ten hours per day. Sunday schools and other religious services are regularly conducted, and Bibles furnished the convicts. None of the prisoners are permitted to be taken outside of the State. Upon being discharged, good clothing is furnished the prisoners, and transportation home or to the borders of the State. Large, regular diminutions of sentences are allowed by law for good conduct, and the Inspectors are expressly authorized to recommend for pardon any convict who, by good behavior, evinces signs of reformation. Such a recommendation is looked

upon as calling for the issuance of a pardon, although the pardon must be issued by the Governor. A discharged convict may be restored to citizenship through the Courts, after the lapse of a certain length of time, upon proof of good behavior before and after release from prison.

I think the pardoning power is as well lodged in the hands of the Governor as it would be with a Board of Pardons.

I would think that it would be best for youthful criminals to be confined separately from the adults, although in our State they are not so separated.

I have been compelled to answer you in a general way, but have tried to cover the substance of your inquiries.

Very respectfully,

WM. B. BATE.

UNITED STATES SENATE,  
WASHINGTON, D. C., April 26, 1886.

ROBT. T. DEVLIN, *Esq., Secretary California State Penological Commission, Sacramento, California:*

DEAR SIR: Your favor of April sixteenth, in relation to the work of your Commission, has been received. I regret that, at the present time, I am too much engaged in attending to a great accumulation of official business here to give the time necessary to answer, in the manner they deserve, the interesting and important questions contained in your letter. The subject is one of vast importance to society, and I am glad to know that so distinguished gentlemen as those comprising your Commission are engaged in the preparation of a report to the Legislature. I am sure that your labors will result in much good, and at my earliest opportunity will be pleased to submit to you such views as I have, in answer to your letter, which will be filed for purposes of future reference.

Very truly, yours,

GEORGE HEARST.

THE STATE OF TEXAS, EXECUTIVE OFFICE,  
AUSTIN, April 19, 1886.

ROBERT T. DEVLIN, *Sacramento, Cal.:*

SIR: In answering the questions contained in your letter of the thirteenth instant I am at some loss.

1. "What is the best system of prison labor?" I hardly know what you mean by system. As far as circumstances will admit, convicts should be kept within walls and required to perform some sort of labor. The labor could be anything that would be remunerative.

2. An advisory Board of Pardons would not be objectionable, but ultimate authority should rest with the Governor.

3. Youthful criminals should be in separate prisons, called reformatories or any other name. They should be required to labor, and be under a thorough system of discipline, with educational facilities.

4. The situation in Texas has not demonstrated the necessity for any aid on discharge, save a suit of clothes, transportation to their homes, and five dollars in money.

5. Prevention of crime. Penalties fixed to their commission that will not indicate a sympathy with crime. The placing of executive officers

under the control of the Governor, so they will not be subject to the whim of the populace.

I am, sir, very respectfully, your obedient servant,

JOHN IRELAND, Governor of Texas.

COMMONWEALTH OF VIRGINIA, GOVERNOR'S OFFICE,  
RICHMOND, VA., April 24, 1886.

Mr. ROBERT T. DEVLIN, *Secretary California State Penological Commission*  
*Sacramento, Cal.:*

MY DEAR SIR: I have the honor to acknowledge the reception of your letter asking me to respond to the following questions, numbered one, two, three, four, and five, viz.:

1. What is the best system of prison labor?
2. Where should the pardoning power be lodged—in the Governor or in a Board?
3. Should youthful criminals be confined in a State Prison or in a separate institution?
4. What aid should the State give to discharged prisoners to prevent them from falling again into crime?

5. Have you any measures to suggest for the better prevention of crime? In accordance with your request, I submit the following replies, adding that only having been in office since first of January, my experience in the matter is limited, and my opinions therefore must be received with due allowance.

In reply to your first question, I have to state, that in Virginia a recent law requires the Governor to send the convicts to the various counties of the Commonwealth upon requisition of the Board of Supervisors of the counties, upon certain conditions, for the purpose of working the public roads in said counties. Such application is of course optional with the Board of Supervisors. After all demands of that nature are exhausted, the Governor is then authorized to hire out in certain order and priority, convicts to companies building railroads in the State; said convicts to be fed, clothed, guarded, and furnished with medical attention by the State, while at work for said companies. The companies are required to furnish suitable quarters for them, transport them to and from the penitentiary, and to pay 40 cents for each day's labor actually performed by each convict; and said companies are also required to pay in lawful money of the United States, into the Treasury of the State, a sum sufficient to pay the expense of clothing, feeding, guarding, etc., paid by the State, as already mentioned, and the balance due the State for hire, may be paid in the bonds of the counties subscribing to said companies. The railroads projected through counties without railroads, and through those having the least number of miles of taxable railroad, to be first supplied.

The working of public roads by convict labor is an untried experiment. The law relating to the hiring of convicts has been found to be practicable and advantageous to the State.

The penitentiary in this State is a self-supporting institution, having paid into the State during the past fiscal year, from first October, 1884, to first October, 1885, \$24,058 83, while its total expenses have been \$15,516 68.

To the second question I answer that I think the pardoning power

should be lodged in a Board of Pardons, subject to the final approval of the Governor, a majority of the Board making a decision.

The multifarious and exacting official duties of the Governor of a State are too numerous and important to give him the proper time in all cases to thoroughly examine records, in order that he may justly decide whether a case is the subject for clemency or not.

To the third question I reply, youthful criminals should be confined in a separate institution, and not in the State Prison.

I regret, so far as the fourth and fifth questions are concerned, I am obliged to answer that I have not had time to give the subject the consideration its importance demands. I am, very respectfully,

Your obedient servant,

FITZHUGH LEE.

PLATTSBURG, N. Y., April 17, 1886.

ROBT. T. DEVLIN, *Esq., Secretary, etc.:*

MY DEAR SIR: Your note of March twenty-third was addressed to me at Albany, N. Y., doubtless under the impression that I remained the Chaplain of the Albany Penitentiary. I am now preaching at this place, though have occupied the chaplaincy there for twelve years. As to the "best method of reforming youthful criminals and aiding discharged prisoners," I suppose I can reply under the supposition that the youthful criminals have been discharged, as while in prison, and surrounded by the evil influences of those older in crime, there is little or no chance for reformation. In both cases, I know of nothing so potent as steady employment and some kind heart and steady hand to hold a personal influence over such cases. Law can never do what a personal influence can accomplish, and yet with the youthful transgressor, a reform farm and school, with Christian teaching, is the next best to a personal interest by some one friend. There can be no reform without systematic labor, as idleness everywhere naturally breeds crime. If homes can be found for young and old upon expiration of a penal service—not homes merely to get all the labor possible for as little money as possible, but where there may be a real interest in the reformation of the criminal—that is the best thing, in my opinion, to be done. The plan of giving money to discharged convicts, to be spent at the pleasure of the convict, is a bad one, and an inducement to intemperance and crime. Many "good hearted" and benevolent people think well of it, but I think them mistaken. I have had men to come to me with an order from the State Agent for Discharged Convicts half drunk, riding in a carriage, and smoking cigars. It did not bear the marks of reform. In brief, my own observation leads me to believe that no man means reform unless he will work, nor will he yield to any efforts at moral suasion if he insists on idleness. Ninety-nine convicts out of every hundred will yield to the influence of old and vicious associations if turned out of a prison, with or without money, to find a chance job of work or remain doing nothing. Hence I think "labor" is the surest road to reformation. How that is to be furnished is, of course, the question for legislative or benevolent action. The rum shops are without doubt the great prolific source of crime in embryo or maturity. Had we none of them, the questions you propose would not be often asked. Convicts who will continue to use intoxicating liquors, and who will persist in living without work, will also almost surely remain criminals. Neither law nor gospel can have any beneficial effect upon them.

Relative to your question about "the indeterminate sentence as carried



out in the Elmira Reformatory," in this State, I am quite favorably impressed with its workings, although the politicians and those who aspire to get the place out of the hands of the present management, bring many forces to bear against the entire system. I believe Mr. Brockway and his assistants to be men earnestly searching after the best methods of dealing with youthful criminals, and think them successful in solving many hard problems in connection with a most difficult subject. That the treatment is not absolutely perfect will be admitted by all who have given attention to it, but the general impression in this State is, I think, quite favorable to the methods of that experiment. I regret not to be able to give you a more satisfactory reply to your questions, but in closing heartily wish you and your associates Godspeed in the good work you are endeavoring to accomplish.

Very respectfully yours,

CHARLES REYNOLDS,  
Formerly Chaplain of the Albany Penitentiary.

WATERLOO, April 21, 1886.

DEAR SIR: Yours of April fourteenth received to-day, and answering, I think I can safely say that the system adopted in this State of deducting or remitting a portion of the sentence on account of good behavior of prisoners while in prison, has worked well and is generally approved. It applies to reformatories and State Prisons. I believe our citizens are satisfied it is a wise provision.

Very respectfully, yours,

STERLING G. HADLEY.

STATE OF NEW JERSEY, EXECUTIVE DEPARTMENT,  
TRENTON, April 20, 1886.

ROBERT T. DEVLIN, *Secretary of the California State Penological Commission, Sacramento, Cal.:*

DEAR SIR: I am in receipt of your letter of April 16, 1886, requesting my reply to certain questions therein contained in reference to prisoners. I have not examined the questions submitted sufficiently to enable me to answer as to any settled views of my own. I will state, however, the position my State holds upon these various questions:

*First*—Our prisoners are employed under the "piece price plan."

*Second*—The pardoning power is vested in a Court of Pardons, composed of the Governor, the Chancellor, and six lay Judges of the Court of Errors and Appeals. It requires the Governor's assent and a majority of the Court in every case to obtain a pardon.

*Third*—We have no "parole" system, and it has never been suggested in this State.

*Fourth*—We confine youthful criminals in the State Reformatory School or in State Prison, according to the judgment of the Judge before whom they are tried and the character of the crime they are charged with.

*Fifth*—We give the prisoners, when they are discharged, a small amount of money, so that they can return to the place from which they were sentenced.

I remain, yours truly,

LEON ABBETT.

WARDEN'S OFFICE, IOWA PENITENTIARY,  
FORT MADISON, IOWA, April 19, 1886.

ROBERT T. DEVLIN, *Esq., Sacramento, Cal.:*

DEAR SIR: Your letter of the third instant to his Excellency Governor Larrabee, was referred to me for reply. I must beg your pardon for having so long delayed answering, but press of official duties has prevented my giving the thoughtful attention to your questions their importance demanded until now. It was doubtless the thought of his Excellency that from the nature of my work and the consideration I would of necessity have given to these questions, that induced him to refer your letter to me with the expectation that my reply would be from the practical standpoint of a prison manager. I do not know that I shall represent the views of Governor Larrabee, but I shall send him a copy of this letter, and if he does not indorse my views, he will doubtless advise you wherein he differs from them.

I will answer your questions in the order in which you put them.

1. How should prisoners be employed? Prisoners should be employed at some kind of labor that will require the exercise of some degree of skill and intelligence. We have in this prison the contract system, and it works well, both for the best interest of the State and the prisoner. I mail you herewith my report, which shows the practical results achieved under this system, which I think greatly preferable to the State account system or the piece price plan. The objections made to the contract system on the score of its being unfair competition with free labor applies with equal or greater force to either of the systems above named, and if that objection shall be considered sufficient to justify the abandonment of these systems of labor, then the only alternative is to employ prisoners at some kind of labor that produces *nothing*, for all admit that they *must* work at something. Their employment at unproductive labor would, in my opinion, so utterly degrade them as to effectually do away with all hope of their reformation in prison, while it would add very largely to the mortality and insanity list, and make the enforcement of prison discipline much more difficult, and eventually drive from the work of prison management the best men now engaged in it. As matters now stand, with popular clamor demanding that the contract system be abolished, it is only where contracts exist which still have a considerable time to run, that it is possible to use this system, for no new contracts would be entered into anywhere until such time as the objections now urged against the system were withdrawn, and there was a prospect that men engaging in the business would have their interests protected. The difficulties encountered in your State under the State account system, judging from the report of Warden Shirley of the San Quentin Prison, are very great, and his recommendations for a change are very wise, but the difficulty would be to secure a change at this time for the reasons above stated. My answer then is that proper investigation will in my opinion show that the contract system, with contracts carefully drawn and the interests of the State and prisoners carefully guarded, is the best mode of employment for prisoners.

2. Where should the pardoning power be lodged, and how exercised? With the Governor and Executive Council, to be exercised only when evidence not produced on the trial of the case is submitted, showing either that the prisoner was wrongfully convicted, or that there were mitigating circumstances which, if shown when the case was tried, would have caused a lighter sentence, or where, in case the prisoner having served a portion of his sentence, it is conclusively shown that his physical condition is such

that he cannot possibly survive until the expiration of his sentence, and then only where it is shown that he has the means to provide for his proper care and treatment, or has friends who are able and willing to properly care for him.

3. Is the parole system good and practicable in this country? I think not. If it is not deemed safe to liberate a prisoner unconditionally, he should not be liberated until the expiration of his sentence, either upon parole or pardon. A confirmed and hardened criminal will not regard the conditions as binding in either case, and the result of the adoption of the parole system would in my judgment be to secure the discharge of prisoners who, while they had no intention of reforming, would still be intelligent and shrewd enough to conform strictly to the rules prescribed in order to secure a parole. Many of the worst criminals in all prisons obey all the rules and regulations, and their conduct as prisoners is perfect, and they thus secure the full benefit of good time laws, such as exist in Iowa, Illinois, and other States. Under the parole system such men would often get released, while less hardened but really more deserving prisoners would remain their full time. It would be just as consistent for the Judge to suspend sentence during good behavior after the prisoner has been tried and convicted, and I think more so. The Board of Managers of the Ohio Penitentiary seem to have great confidence in the success of the parole system as adopted in that State; but the short time that has elapsed since the law went into effect, and the shorter time it has been on trial, has not yet demonstrated its success or failure. If it shall prove a success in Ohio it will be time enough for other States to adopt it. If after a fair trial the objections I have urged should prove, by the exercise of wise discretion on the part of those intrusted with the power to grant paroles, to be not well founded, I shall be very glad to admit that I was mistaken, and to urge the adoption of the law in Iowa.

4. Should youthful criminals be confined in the State Prison or in a separate industrial or reform school? In an industrial or reform school, below the age of sixteen, save in exceptional cases where such great depravity is shown as to reduce the prospect of reform below the minimum. All prisons contain more or less graduates from reform schools, but while this is true, it does not follow that it is owing to the mismanagement of those institutions. It is the incorrigible criminal, young and old, that goes back to the prison after discharge, and no system of prison management is adequate to effect a reformation of this class.

5. What aid should the State give to discharged prisoners to prevent them from falling again into crime? A gift in money on discharge, of not less than five, nor more than fifty dollars, to be left to the discretion of the Warden. The amount should be determined by length of sentence served, whether married or single, whether the discharged prisoner has any means of his own or not, and whether he is a hardened criminal and has served more than one term in prison, and in addition to the gift in money, a good common suit of clothing, including an overcoat in winter, and transportation to the point where convicted or an equal distance in any other direction. The State cannot, in my judgment, afford to become so far paternal as to undertake the support and maintenance of discharged prisoners or to furnish them with employment, but it should render such immediate assistance as to enable them to maintain themselves for such reasonable time as may be necessary for them to secure honest employment. I would not be in favor of any plan of assistance that would seem to be offering a premium on crime, or make a prison less a place to be avoided. I would do nothing to make prison life attractive,

neither would I neglect any proper or legitimate means to secure the reformation of the criminal, and would treat him with a wise humanity while compelling him to conform to that strict discipline which is absolutely essential to the successful management of a prison. I believe that a large majority of the prisoners discharged from this and other prisons, go out in every sense better than when they were committed. That they do not all remain so is not the fault of those who have sought to secure their reformation while in confinement.

If what I have written shall prove of any interest to the Commission I shall be amply repaid. I should be glad to be favored with a copy of your report when published. To one engaged in prison management all investigation of the subject is of great interest, and an interchange of opinions must prove beneficial even if no suggestion made is deemed worthy of adoption. Hoping that much good may result to the penal institutions of your State, and through them to those of other States, from the report of your Commission, I am,

Very truly yours,

G. W. CROSLY.

EXECUTIVE DEPARTMENT, GOVERNOR'S OFFICE,  
CARSON CITY, NEV., May 1, 1886. }

DEAR SIR: In reply to your letter of April, 1886, I would state:

1. Prisoners should be employed at labor that does not come in competition with free labor.
2. The pardoning power should be lodged in a Board constituted of not less than three or more persons. The pardoning power should be exercised with great care and discretion.
3. Youthful convicts should be confined in an institution separate from older criminals.
4. The State should aid discharged prisoners by giving each a suit of clothes and a small sum of money.

The foregoing are my views upon the subject.

Respectfully,

J. W. ADAMS.

To ROBERT T. DEVLIN, Esq., Secretary California State Penological Commission, Sacramento, Cal.

UNITED STATES SENATE,  
WASHINGTON, D. C., April 29, 1886. }

ROBT. T. DEVLIN, Secretary California Penological Commission, Sacramento:

DEAR SIR: Yours of April sixteenth received. Your interrogatories are those that have engaged the profound attention of men who have devoted great consideration to the subject. I doubt if I can add anything to what has already been said. At any rate, I would not venture without giving the subject a great deal of thought, which I cannot possibly do at this time.

Yours respectfully,

LELAND STANFORD.

To General SAMUEL E. CHAMBERLAIN:

In the interest of prison management for California, and in behalf of the Penological Commission of that State, the following questions have

been formulated and propounded to you as a practical prison officer. In answering, please sign in your present or former official capacity:

- Q. 1. How should the officers and attachés of a prison, other than the Warden, be appointed? A. By the Warden.
- Q. 2. Should the physician and chaplain be entirely subordinate to the Warden, and subject to his arbitrary discharge, or more or less independent of him? A. To be discharged *only* with the approval of the Directors.
- Q. 3. Should prisoners be treated as humanely as possible consistent with safety and discipline, or their treatment made strict and severe? A. Strict, but humane.
- Q. 4. Should prisoners, under proper restrictions, have the privilege of appeal from the officer in charge to the Warden, and from the Warden to the Directors, or of writing the Governor without official surveillance? What would be the effect on discipline of their knowing that there was such an appeal to a power behind their officers? A. Should have the right to appeal. The effect on discipline will depend on the *good sense* of the official appealed to.
- Q. 5. What form of punishment do you approve of in enforcing prison rules? A. Solitary confinement and deprivation of privileges.
- Q. 6. What form of religious observances should be enforced? A. Protestant, Catholic, optional.
- Q. 7. To what extent, and how, should schooling and moral instruction be conducted? A. To the fullest extent possible.
- Q. 8. To what extent may the friends and relatives of prisoners be allowed to see them, and what is the effect of ordinary unrestricted visiting? A. Once in two months; can't say, never tried it.
- Q. 9. What is the effect of general newspaper reading? A. Pernicious.
- Q. 10. Should prisoners be allowed comforts and luxuries from friends? A. No.
- Q. 11. What would you name, and how would you arrange and classify, a complete prison system for a State? A. With man impossible.
- Q. 12. What plan do you approve of for treating the insane, and partially insane, criminals? Would you have an insane department connected with a prison? A. Yes.
- Q. 13. Is it a fact, in prison management, that "*offenses have diminished as penalties have softened*?" A. Yes. "Reformatories" have proved nurseries of crime, a bonus for youth to become criminals.
- Please make any suggestions occurring to you, without confining yourself to questions, and oblige.

S. E. CHAMBERLAIN,  
Warden, Connecticut State Prison.

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF PUBLIC CHARITIES,  
1224 CHESTNUT STREET, PHILADELPHIA, April 29, 1886.

Mr. R. T. DEVLIN, *Sacramento, California*:

DEAR SIR: By request of the Governor of this State, I take pleasure in forwarding to your address, by Adams' Express, this day, the following printed reports: Elmira Reformatory, Elmira, New York; Eastern Penitentiary of Pennsylvania, Philadelphia; Western Penitentiary of Pennsylvania, Pittsburg; State Board of Charities, Pennsylvania; National Prison Association, National Conference, Charities, and Correction, which I trust

will assist you in solving some of the questions of penology that will claim the attention of your Commission.  
Yours, truly,

PHILIP C. GARRETT.

OFFICE PENITENTIARY, BATON ROUGE, April 26, 1886.

ROBERT T. DEVLIN, *Esq., Sacramento, California*:

DEAR SIR: Your letter of inquiry, relative to prison management, etc., received, and I hasten to reply.

I regret to say that we have no parole system, or other mode of release of prisoners, but the serving of the term or pardon by the Governor, who can only act on the recommendation of a majority of the Board of Pardons, composed of the trial Judge, Attorney-General, and Lieutenant-Governor, and not otherwise.

I have no views to express on the subjects you mention, excepting that I think that good prisoners of certain grades should receive some reward for good conduct, etc.

Respectfully yours, etc.,

JNO. H. MATTA, Clerk.

MAINE STATE PRISON, WARDEN'S OFFICE, }  
THOMASTON, April 30, 1886. }

GENTS: More from the hope of examining formulated results than other reasons, I inclose views touching the matter of interrogatories received under cover of yours of the fifteenth instant.

1 and 2. *All* subordinate officers should be appointed by the Warden, and confirmed by the Directors or Inspectors, subject to removal by same authority.

3. Inhumanity is a crime. All rules and requirements, particularly minor ones, to be strictly obeyed; certain merited retribution to follow willful transgression.

4. Would permit convicts to write to any one a straightforward letter, subject to examination before sent; and would allow them access to the Warden and superior officials, on application, when practicable. The Warden must be *supreme* so long as he remains the responsible head.

5. Deprivation of privileges—of reading matter, writing, lights, or tobacco—will often be effective; failing these, solitary dungeon, bread and water will usually prove entirely effective.

6. Any forms and teachings, without regard to sect, that will encourage reading of the Bible.

7. The whole course should be a school of moral instruction. Have never been able to accomplish much in the way of educating, except to learn to read and write; that by individual teaching in the cell.

8. Would allow a convict to receive visits from friends and relatives in presence of an officer, say once a month. Would not *confine* one whose department was exemplary to that.

9. Properly selected newspapers and periodicals are of advantage.

10. To no great extent. The State is bound to provide suitably for its wards. No *class* privileges.

11. Must depend largely upon the conditions, industries, number of convicts, their capacities, etc.

12. Experts should have care of the insane, either at a hospital, or connection with prison; the former would *seem* the more fitting place.

13. If "the softening of penalties" means lack of desire or ability to enforce such as are merited, no. Certain, not *brutal* penalties, in proportion to magnitude of the offense, work reformation and diminish crime. Except generally, I have never been able to formulate rules for prison management satisfactory to myself. Conditions are so diverse, and individuals so different, that the *exceptions* seem more numerous than the cases coming under the rule.

Earlier I had the pleasure of sending copy of "Rules and Regulations governing this institution; also copy of report for 1885, which I trust arrived duly.

Believe me, very respectfully, yours,

G. P. BEAN, Warden.

California State Penological Commission, R. T. DEVLIN, Esq., Secretary.

BOARD OF STATE CHARITIES,  
COLUMBUS, O., April 26, 1886.

ROBERT T. DEVLIN, Sacramento, Cal.:

DEAR SIR: Yours to Gov. J. B. Foraker of the thirteenth instant, making inquiry concerning "the parole system," has been referred to this office, and by request of the Governor, I have the honor to reply.

1. Some objections were raised as to the constitutionality of the law, but our Supreme Court has decided the law to be constitutional.

2. Some objections have been raised against the law growing out of a misinterpretation of its spirit, and mistakes in its administration, the latter chiefly in hearing counsel, and giving consideration to petitions and other outside influences by the Board of Managers, whereas the law contemplates the prisoner himself while in custody and under the eye of the law, his conduct in labor, study, and general deportment.

These mistakes wrought sadly upon the quiet, and I think the general order of the penitentiary, and to the prejudice of the law in many communities. You will readily appreciate the effect of sending back to a community an incorrigible, mean criminal, without notice or any opportunity for remonstrance. You will just as readily see how demoralizing to prisoners when they discover that outside influences are not only taken into consideration, but are more potent than the best record the prisoner can make for himself. Mistakes aside, for which the law is not responsible, the system of parole as provided for in the law of our State is wise and practically useful. First, in promoting good conduct in the prisoner, aiding materially as reformatory prison discipline, and in securing the rehabilitation of the discharged convict. Secondly, it largely relieves the Governor from the consideration of pardon papers, one of the greatest annoyances connected with the executive office.

But we have learned something from our mistakes. These will not be repeated. Good results are already apparent, and on the whole we are quite favorably impressed with the law.

I have requested the Warden to send you a report of the penitentiary for the past year. The rules of parole are published in the report.

Yours, most respectfully,

A. G. BYERS.

UTICA, NEW YORK, May 5, 1886.

R. T. DEVLIN, Esq.:

DEAR SIR: I have been absent from home on a long journey to the South, from which I have but recently returned, in no respect improved "in mind, body, or estate." Your letter of April fourteenth found me on my return. I regret to say I can give you no satisfactory reply. Many years since I was much interested in prison reforms, chiefly, however, as one of a Commission whose labors were mainly directed to our own locality. I have become an old man, and although I have not wholly lost my concerns in regard to such matters, increasing years and infirmities have obliged me to relinquish all my connection with such efforts.

In regard to the Elmira Reformatory, I am almost ashamed to say that I have paid so little attention to the practical operation of the system of "indeterminate sentences," and the methods of its administration, that I cannot even venture an opinion upon that topic. If I should attempt it, the result might very likely be more misleading than instructive. Regretting my inability to be of service to you, and wishing you great success in your efforts,

I am most respectfully and truly yours,

WILLIAM J. BACON.

WARSAW, NEW YORK, May 5, 1886.

ROBERT DEVLIN, Esq., Secretary California State Penological Commission:

DEAR SIR: Yours of the fourteenth of April in regard to the Elmira Reformatory is at hand.

While I would be willing to give you my views and all the information I might have, I think you would receive it so much better from another party, that I recommend you to write him.

I refer to the Hon. Wm. P. Letchworth, Chairman of our State Board of Charities, a gentleman who has made a study of such matters for many years, and is thoroughly posted in every respect. I think he would give you all the information you desire, and coming from such a source would be of more use and benefit to you than from myself.

His address is Portageville, Wyoming County, New York, and if he should be absent from home his letters would be forwarded to him.

Yours, very respectfully,

AUGUSTUS FRANK.

STATE OF RHODE ISLAND, OFFICE OF THE BOARD OF }  
STATE CHARITIES AND CORRECTIONS, PROVIDENCE, May 10, 1886. }

Hon. ROBERT T. DEVLIN, Secretary California State Penological Commission:

DEAR SIR: His Excellency, Governor George Peabody Wetmore, who succeeded Hon. A. O. Bourn about a year ago, has referred to this office your letter of April thirteenth, with a request that I reply thereto.

The questions asked in the letter, it is scarcely necessary to say, are ones upon which there is great diversity of opinion, and I do not know how I can better answer them than by citing the laws and practice of our State, assuming that the laws, at least, embody the opinions of its citizens.

1. At the State Prison, which is under the charge of this Board, the convicts are employed, so far as possible, under the contract system, which we believe to be the best. This is authorized by law.

2. In regard to the pardoning power, our Constitution has the following: "The Governor, by and with the advice and consent of the Senate, shall hereafter exclusively exercise the pardoning power, except in cases of impeachment, to the same extent as such power is now exercised by the General Assembly." (Article II of Articles of Amendment, adopted November, 1854.)

The Public Statutes of Rhode Island, Chapter XIV, "Of the Governor," have the following:

SECTION 1. Petitions for pardon, under article second of the amendments to the Constitution, shall be presented to the Governor, and the petitioners shall comply with the rules and regulations respecting the filing and hearing of the same as he may, from time to time, prescribe.

SEC. 2. In the exercise of the power of pardon, the persons who receive the benefit of such pardon shall comply with and be subject to such terms and conditions as may be imposed by the Governor at the time of the exercise of such power.

3. The provision for treatment of juvenile offenders is embodied in the statute as follows:

"Whenever any person under the age of eighteen years shall be convicted by any Court of any criminal offense, such Court may sentence such person to the State Reform School for a term not less than two years nor longer than his minority, or to such punishment as is otherwise provided by law for the same offense, and if the sentence be to the Reform School then it shall be in the alternative, to the State Reform School or to such punishment as would otherwise have been awarded." (Public Statutes Chap. 248, Sec. 49.)

4. The law authorizes the Board to pay to each convict upon his discharge a sum not exceeding one tenth of what he may have earned during his sentence, the sum in no case, however, to be less than five dollars. The convict, also, must be decently clothed when discharged.

The law, also, provides that not exceeding one tenth of the earnings of convicts may be paid to their families or near relations, during their sentences, instead of to themselves.

Yours, very respectfully,

WM. W. CHAPIN, Secretary.

WARDEN'S OFFICE, MINNESOTA STATE PRISON,  
STILLWATER, MINN., May 7, 1886.

Hon. ROBERT T. DEVLIN, *Sacramento, Cal.*:

SIR: I am in receipt of your letter of the first instant, and in reply will say that I think well of the parole system, but I consider the matter of assistance for discharged convicts of great importance; the aid they need is not money, or red tape State aid, but the aid of good citizens in giving them a chance to rise again in the world; give them a good situation and assist the deserving in gaining a place in society. This is best accomplished by the Wardens being in correspondence with good parties in different parts of the State, who will take an interest in them when they reach there, and aid in getting them work, and, if they prove worthy, give them further assistance.

Yours, truly,

J. A. REED, Warden.

DETROIT HOUSE OF CORRECTION, OFFICE OF THE SUPERINTENDENT,  
DETROIT, May 15, 1886.

ROBERT T. DEVLIN, *Secretary, Sacramento, Cal.*:

DEAR SIR: Replying to yours of first instant, I will state, it would be a very difficult undertaking for a State to engage in finding employment for discharged convicts. Provision for maintenance for a reasonable length of time, such as would give a fair opportunity to secure employment, would be the limit of the State's duty, otherwise impositions would surely follow, especially among the crime class. A society for such purpose is a necessity, I think, beyond any question; but such, to be useful, should be not only practical, but free from the sentimentalisms that seem to be the great drawback to practical efforts. This you will more readily understand by a knowledge of the class to be dealt with, who, as a rule, go strong for the sentimental. It is true there are very many who can be helped, but a little restraining power is a great motor in such matters. This, of course, points to a carefully matured "ticket of leave plan" for first offenders, and a separation of such from the crime class, during confinement. My impression is that an intermediate prison for first offenders is a necessity, if any reformatory results are expected; and even then, results will not be very encouraging. The immensity of the question you are investigating almost overawes one, and yet it is a demand from society that is of great importance to its peace and good order.

From my experience I am in favor of the indeterminate sentence plan, carefully matured and stripped of the ornamentalisms that are now deemed a necessity at Elmira. I am opposed to the contract system of labor and the "piece price plan" as being equally detrimental to every practical effort for reformation. State account the only true way, if reformation is the object.

I think I have answered your inquiries from my standpoint, and trust you may be able to cull a little at least from it. Wishing you every success, I am,

Respectfully yours,

JOSEPH NICHOLSON, Superintendent.

35 AVON STREET, BOSTON, May 13, 1886.

To ROBERT T. DEVLIN, *Esq., Sacramento, Cal.*:

DEAR SIR: Yours of May sixth received this morning. I will say that I am now on my twenty-first year as agent for discharged convicts, acting both for the State of Massachusetts and also for the Massachusetts Society for Aiding Discharged Convicts.

The State appropriates yearly \$3,000 for the benefit of those discharged from State Prison and \$1,000 for salary of agent, making \$4,000 in all—expenses of office, traveling of agent and all other expenses of agent, while working for the discharged convict, to be paid out of the \$3,000. The Massachusetts Society for Aiding Discharged Convicts is supported by contributions from the public, collected by the agent; also an occasional legacy or bequest goes into the treasury of the society. The society pays the agent \$100 per month, clear of all expenses. I visit the State Prison the last week in every month (oftener if necessary), and have an interview with each one who is to be discharged the following month; become thoroughly acquainted with him; if possible, get his early history as far forth as I can; create a confidence between him and me, with the

understanding that the confidence he places in me shall be sacred on my part. By that means the right way to deal with each one when they are discharged will begin to show itself, and oftentimes the poor fellow who has felt that he was entirely forsaken both by God and man, and has never heard the words before spoken in his ear, "I have come to befriend you," looks with astonishment and feels like another person, and the little spark of manhood there is in him can be brought out *in that way* *it is there*. When discharged, we aid him to get employment; furnish him with tools, if he has a trade; board for a week or two, while seeking employ; clothing enough for a change, that he need not have to steal to keep clean and decent looking for work. If he has a home in other parts of the State, or in other States not too far off, we send him to his home to his friends. Whatever will benefit him most to *make a man of him* and lead him into an honest way of earning a living, that we strive to do. What we might have to do to-day for a man is no criterion for the man that we may have to deal with to-morrow.

I find as many different phases of character and disposition among the prisoners as I do with men outside of the prison, and have to meet them on that line and act accordingly.

I think that there should be but one agent for the State, and that the keeper of each house of correction, in every county, should assist every man when discharged from the house of correction, to the amount of from five to fifteen dollars, and that that expense should be charged to the county expenses, not in cash, but in clothing, family stores if he has a family, tools if he needs them, or in any way whereby it will benefit him and enable him to be a better man. That should not apply to an habitual tramp, or an habitual thief, or an habitual drunkard and bummer. The law should be so that the keeper of a house of correction, and the County Commissioners, can use their good judgment and some discretion about it, although I have tried the experiment with some of the worst criminals on earth, and by so doing have brought them up out of their degradation, so that they have led honest lives.

You need a great deal of faith, an abundance of patience, a large amount of perseverance, and considerable tact in studying and understanding human nature to be able to deal with that class of men rightly.

If I was where I could meet with you and your Commissioners, I could talk more with you in one hour than I can write in a year on this subject.

Inclosed in same mail with this, I send you a few old reports of mine, if they are of any benefit to you I shall be glad. Of course, you may find considerable repetition in them; it cannot be otherwise; it is the best I can do for you at present in the way of reports. I think the States of Illinois, Maryland, New York, Connecticut, and Rhode Island have agencies of some kind for discharged convicts. If I can be of any service to you hereafter, I shall be pleased to do so.

I remain, your humble servant,

DANIEL RUSSELL,  
Agent Discharged Convicts, 35 Avon Street, Boston, Mass.

OSWEGO, NEW YORK, May 14, 1886.

ROBT. T. DEVLIN, Esq., Secretary:

DEAR SIR: In replying to your favor relating to the Elmira plan of prison discipline, I beg to say I regard it as eminently successful, and the only plan resting on a philosophical basis.

Our prisons, county and State, are acknowledged failures, except, possibly, as to life members. Their inmates return to us, not only not improved, but worse. Irritated by a morbid feeling of injustice, and finding every avenue to respectability foreclosed against them, the criminal forces within them augmented and the moral checks lessened, they enter a more determined course of crime.

We have acted on the mistake that mere punishment, which is the equivalent of crime, cancels the wrong and entitles the criminal to pardon. Not necessarily. The right to freedom depends on the forces within the man, and which will work out in his activities.

While something of punishment is due to the majesty of violated law, still it must include the idea of reformation. We must reach the sources of criminal purpose and apply healing and strength to the diseased and weakened powers which are active in the inception of crime.

This truth is recognized at Elmira and the treatment rests upon it. The weakened power and the motive behind it are fed and supported and held and led by a skillful hand till a *habitude* is formed and the power may be safely left to its automatic working. This terminates the sentence and entitles the prisoner to his pardon.

I do not hope for much from this or any other treatment in a ripened criminal. He reaches a point beyond which reform is impossible. But with the young and onward up to this point, this seems to be the true line of work and hope.

I am glad to know the thoughtful men of our Great West are awakened on this subject. What to do with the pauper and criminal class—for they are linked together—is a question which will abide with us till the problem is solved.

I beg to refer you to a well considered article on this subject in the February number of *Harpers' Monthly*, by Charles Dudley Warner.

Very respectfully, your obedient servant,

O. J. HARMON.

NATIONAL PRISON ASSOCIATION OF THE UNITED STATES, }  
SECRETARY'S OFFICE, 65 BIBLE HOUSE, }  
NEW YORK, May 19, 1886.

Mr. ROBT. T. DEVLIN, *Sacramento, Cal.*:

DEAR SIR: Mr. Round directs me to inform you, in answer to yours of the eleventh instant, that the best list obtainable, such as you want, is the one of the people that attended the Rome International Congress in 1885. Mr. Round has written to the Secretary to get you a list, and will send it to you on its receipt here. He is very sorry he had none on hand.

Respectfully yours,

J. RESTON, Private Secretary.

OHIO PENITENTIARY, CLERK'S OFFICE, }  
COLUMBUS, O., May 15, 1886.

Hon. ROBERT T. DEVLIN:

DEAR SIR: Yours regarding parole law received. We have now been practically under parole law for one year; results all that the most sanguine could anticipate. I am of the opinion the power should be vested in the Board of Managers, and that rules governing applications should require a statement from the Judge, Prosecutor, and a few honorable, respected



citizens, in addition as to former character and family relations. I find that in almost every instance where *paid attorneys* have been allowed to present the claims of applicants, we have most fears of successful results. My views would be a statement as above, and then the prison record determine the recommendation of the Warden. We find *non-residents* of the State have given us trouble who have been paroled. Those having homes—family ties—are invariably doing well, and especially where the wife has been true and steadfast in her family relations.

Some embarrassment as to eligibility under our law as to second term prisoners; Attorney-General holds that indictments on two counts, two sentences for different terms, one beginning at the expiration of the other received at same term of Court, are first term prisoners. I find the law requires that the prisoner shall serve the minimum of the sentence. We hold they must complete first term, and then serve minimum of second before eligible to parole. The law ought to specify such cases, and it is desirable to parole such prisoners, specially mention as to what is the minimum of sentence in the event of two sentences given at same time.

Above all things, after the statement of responsible parties known to be such, let prison record recommend, and not paid attorneys.

Respectfully,

ISAAC G. PEETREY, Warden.

OFFICE OF COMMISSIONERS OF PRISONS,  
STATE HOUSE, BOSTON, May 25, 1886.

ROBERT T. DEVLIN, Esq.:

DEAR SIR: Your letter received, and shall be glad if I can give you any information that may be of use to you. It is not an easy matter to give a summary of my work, its duties are so varied. In answer to your first query I shall most emphatically say that I believe a woman should have charge of female prisoners; if she has tact and the right requisites, can get at bottom facts in their personal history, and upon this basis one can determine the best method of helping them. My experience as clerk in the same department was of great assistance to me, as I became somewhat used to the element I had to deal with. My work has been in direct conjunction with the Board, who have given me the largest liberty in conducting it, and have been always ready to be consulted in difficult cases. There are no rules that can guide one; circumstances must be taken into consideration, and work correspond to needs, which must necessarily be of great variety.

As to the appropriation, I have never exhausted it, for in my judgment it is not well to be lavish with this class, but endeavor to put them in a way to help themselves; furnishing them with such clothing as will make them look respectable, and is needful for domestic service, rarely giving them money; assisting them in finding places for them in families, laundry work, or that which they are able to do best. If they are ill, helping them to hospital or dispensary treatment; visiting them, meanwhile, assuring them that some one is interested in their welfare. Sometimes, if they are not able to work, I pay board for them for a short time. I have a large correspondence, which I consider invaluable; some of them have continued for three years; impossible to visit them, some of them so far away, send as many of them away from their old haunts and acquaintances, as

less liable to temptation. I keep a record of the women I help, of the amount expended, and a daily journal, which is useful for reference.  
Very respectfully yours,

S. E. FRYE.

There has been no opposition to the office.

UNITED STATES SENATE,  
WASHINGTON, D. C., July 6, 1886.

ROBERT T. DEVLIN, Esq., Secretary California State Penological Commission, Sacramento, Cal.:

MY DEAR SIR: Your circular of June 28, 1886, was received, and it would afford me pleasure to answer, as nearly as might be in my power, the series of questions propounded therein, concerning the cause of crime, punishment of criminals, etc.; but the pressure of public duties at this stage of the session will preoccupy my whole time.

Very respectfully,

CHARLES F. MANDERSON.

THE SEMI-TROPICAL, A MONTHLY JOURNAL,  
DEVOTED TO SOUTHERN LITERATURE, INDUSTRY, AND IMMIGRATION.  
JACKSONVILLE, FLA., July 1, 1886.

ROBERT T. DEVLIN, Secretary California State Penological Commission:

SIR: In brief answer to your inquiries of twenty-first ultimo, I submit the following answer to questions:

1. Primarily, whisky, licentiousness, and gambling; secondarily, secret organizations, sensational literature, and political demagogism, appealing to passion and prejudice to create antagonism between labor and capital.
2. Restrain the freedom of intoxicating liquor, prohibit gambling and carrying deadly weapons, prohibit all secret organizations, and summarily punish all conspirators against the freedom and property of citizens.
3. Entire seclusion from all public observation and information, constant labor, with enforced silence, isolation, with only access to good books and a faithful chaplain, and an abridgment of their time of confinement for obedience and good behavior.
4. No other aid than friendly advice and assistance in securing steady employment in whatever branch of industry they may desire and are fitted for.
5. Juvenile criminals should never be associated with adults, but consigned to strict moral, sanitary, and industrial instruction, with as little as possible of arbitrary force.
6. Compulsory education and homes provided at public expense for all uncared for children.

Very respectfully, your obedient servant,

HARRISON REED.

STATE OF NEW YORK, OFFICE OF THE COMMISSIONER OF  
THE STATE BOARD OF CHARITIES (EIGHTH JUDICIAL DISTRICT),  
GLENN IRIS, PORTAGEVILLE P. O., July 2, 1886.

Hon. ROBERT T. DEVLIN, Commissioner, etc.:

DEAR SIR: Replying to your esteemed note of the twenty-third ultimo, I beg to say, in answer to queries:

1. Intemperance and corrupt, sensational literature.
2. Restrictive legislation based upon an enlightened public opinion.
3. This question I cannot briefly answer with satisfaction.
4. Such as are advocated by the New York Prison Association.
5. These questions I will answer in a paper I am now preparing for the National Conference of Charities and Correction, to be held at St. Paul, Minnesota, commencing on the thirteenth instant. The paper is entitled "Children of the State," and will probably appear, at least in part, in the printed proceedings of the conference, which may be had of the official stenographer, Mrs. Isabel C. Barrows, 141 Franklin Street, Boston.

Yours, very respectfully,

WM. P. LETCHWORTH

STATE OF MICHIGAN, BOARD OF CORRECTIONS AND CHARITIES,  
GRAND RAPIDS, MICH., July 5, 1886.

Mr. ROBERT T. DEVLIN, *Commissioner, California State Penological Commission*:

MY DEAR SIR: I am in receipt of yours twenty-first June. The questions cover a large amount of ground, and just now I am very much occupied. I feel scarcely competent to deal with some of the problems, but will at an early day give you the result of my observation.

Yours, very truly,

GEO. D. GILLESPIE.

BANKING HOUSE OF FOSTER & Co.,  
FOSTORIA, OHIO, July 5, 1886.

Mr. ROBERT T. DEVLIN, *Secretary, Sacramento, California*:

DEAR SIR: Your favor of the twenty-third ultimo is at hand. To answer fully the six questions you propound will take considerable time. At present I am very much engaged in matters of business, and do not see how I can undertake to answer the questions you propound as I would like to. The subject is one to which I have given considerable thought, and if I find the time, I will in the near future undertake to give you answers to the six questions you propound. In the meantime, if you could get copies of the reports of the State Board of Charities of Ohio for the past six years, you would find much in it that would be interesting upon this topic. You, of course, know of Mr. Fred. Wines, Secretary of the State Board of Charities of Illinois, and General R. Brinkerhoff, of Mansfield, Ohio, gentlemen who have given the subject of prison reform and management great attention. They are so situated as to be able to go into the subject fully, and if you have not conferred with them, I would advise you to do so. I send you by mail a copy of my last message to the General Assembly of Ohio, in which you will find discussed some of the features to which your questions refer.

Very truly, yours,

C. W. FOSTER.

CHARITY ORGANIZATION SOCIETY OF THE CITY OF NEW YORK,  
CENTRAL OFFICE, 21 UNIVERSITY PLACE, July 1, 1886.

ROBERT T. DEVLIN, *Esq., Secretary California State Penological Commission*:

DEAR SIR: In reply to yours of June twenty-third, I would say that our society is yet in its infancy, and has not yet been able to take up the con-

sideration of the subjects named in your letter. You would be likely to get the best information and suggestions from the State Board of Charities, Albany, N. Y., or from the Prison Association of New York, 65 Bible House, New York City.

Regretting that we cannot give you any assistance in the matter,  
Yours, very truly,

CHAS. D. KELLOGG,  
Organizing Secretary.

CHARITY ORGANIZATION SOCIETY OF THE CITY OF NEW YORK,  
CENTRAL OFFICE, 21 UNIVERSITY PLACE, July 2, 1886.

ROBT. T. DEVLIN, *Esq., Secretary California State Penological Commission*:

DEAR SIR: Referring to my letter of yesterday, I venture to add to it, if not out of order, a reply to the first question on your circular of twenty-third June, viz.: "What do you consider the principal causes of crime?"

Ans. (a). Intemperance.

Ans. (b). Unwise and indiscriminate charity.

The larger part of the minor crimes which fill our workhouses, is encouraged and supported by sentimental and heedless almsgivers. Their gifts tempt to improvidence, self-indulgence, aimlessness, tramping, vagrancy, idleness, and the whole brood of petty crimes which flow from these.

I fully believe that these two causes will account for 90 per cent of all the crime of the country, and that in all large cities more than 75 per cent of the amount given in direct relief, supplies the means for intemperance.

Yours, very truly,

CHAS. D. KELLOGG,  
Organizing Secretary.

P. S.—Will be very glad of a copy of your report when completed and printed.

ELK GROVE, SACRAMENTO COUNTY, CAL., July 6, 1886.

Hon. ROBERT T. DEVLIN, *Secretary of State Penological Commission*:

I reply to questions in your communication of June twenty-eighth.

Question 1. What do you consider the principal cause of crime?

Answer. Idleness, gambling, intemperance, and social demoralization—the latter caused by the poor endeavoring to imitate the extravagance of the rich.

Question 2. What agencies do you consider as most effectual for abating or removing these causes?

Answer. For idleness, industry from youth to old age. A gambler is a public enemy, and should be suppressed by the commonwealth, and should never be trusted in public or private life. For intemperance (inasmuch as it cannot be entirely suppressed) I would impose a high license for selling intoxicating beverages and tobacco—at least one thousand dollars per year, and hold the retailer of liquors responsible for all damages his victims may commit while intoxicated.

Question 3. What agencies do you consider as most effectual in reforming convicts while they are in prison?

Answer. Work, work, WORK, from the time they enter prison until they leave. They should be taught some useful industry, whereby their

minds, as well as hands, may be occupied with healthy action, and kept from demoralizing tendencies.

Question 4. What aid should be given to discharged prisoners, to prevent them from falling again into crime, and to assist them in obtaining employment?

Answer. Having learned some useful trade or occupation while in prison, they should be assisted by the State to some employment where they can make an honest living; in other words, "help them to help themselves."

Question 5. How should juvenile criminals be cared for?

Answer. As soon as possible they should be taught that all useful industry is honorable, and if parents have failed to inculcate such lessons by example and precept, the State, in self-defense, should "apprentice them out" to those who will.

Question 6. What can the State do towards saving the uncared-for children from a criminal life?

Answer. Establish technical schools where they may learn some useful trade and be self-sustaining and independent, which are fundamental principles for every man, to become successful.

Yours, respectfully,

THOMAS McCONNELL.

LAW OFFICE OF KITCHEL & JELLIFFE,  
NEW YORK, July 1, 1886.

ROBERT T. DEVLIN, *Esq.*:

DEAR SIR: I shall be pleased to comply with your request, in giving my views upon the questions in your letter of the twenty-third ultimo, and will endeavor to do so in the next few weeks. Am quite busy at present in closing up matters for summer vacation. I am glad to know that your State has taken steps to investigate thoroughly this important matter—much more important to the State than many suppose. I am satisfied, in my own mind, that crime can be largely decreased, and many criminals saved, by wise legislation and proper treatment.

Very respectfully, your obedient servant,

CHARLES H. KITCHEL.

STATE OF OHIO, SUPREME COURT CONSULTATION ROOM,  
MARIETTA, OHIO, July 1, 1886.

ROBERT T. DEVLIN, *Esq.*, *Sacramento, Cal.*:

DEAR SIR: I have given the subject of "prison discipline" some thought. I read a paper that expresses my views very well. I have had no practical experience, except as I have visited several institutions and tried to study the prisoner and his surroundings; and some experience in defending the accused. I will try to send you a copy of the paper, which at last is published in a little book with others.

Yours truly,

M. D. FOLLETT.

STATE OF NEW YORK, SUPREME COURT CHAMBERS,  
ALBANY, June 30, 1886.

ROBERT T. DEVLIN, *Esq.*, *Secretary, etc., Sacramento, Cal.*:

DEAR SIR: Your letter of the twenty-third of March, arrived here at a time when I was traveling in your State. I returned only a day or two since.

My official duties, especially for several years last past, have been such that I have had little or nothing to do with the practical working of criminal laws. I have really had no experience in respect to the reforming of criminals, or the aiding of discharged criminals, or any of those matters which are of such great importance. Nor do I know anything about the effect of the indeterminate sentence, as carried out in the Elmira Reformatory.

It seems to me, therefore, that my views on the subject can be of little value, because what you want is not speculation, but the result of experience.

I have sometimes been disposed to doubt whether punishment was of any use, except so far as imprisonment for the time it lasts prevents the imprisoned person from committing crime. I am doubtful as to the reforming effect, and somewhat doubtful even as to the restraining effect, either on the convict, or on others. The thought has sometimes come to me, that if prisoners could be set at work on farms (ranches, you would say), the out of door life, and the contact with nature, might have a much better effect than is produced by labor in a workshop. But I can hardly see how such a plan could be carried out. And I do not even know that trees, and flowers, and plants would have any reforming effect on men once soiled by crime.

I feel the difficulties of the subject very strongly, and do not know whence the solution is to come.

Very truly yours,

WILLIAM L. LEARNED.

NORTHAMPTON, MASSACHUSETTS, June 29, 1886.

DEAR SIR: I reply to your questions (returned with this), by number:

1. Principal causes of crime. First and greatest, dram-selling and dram-drinking. Next, the leniency of public sentiment toward masculine unchastity, and the toleration of establishments for its accommodation. Next, ignorance and its attendant vices with, especially, unquickened reasoning powers. Next, putting minors at hired labor, and allowing minors to pursue street callings.

2. Means of abating or removing crime. The treatment of dram-shops as public nuisances, and of drunkards of *all sorts* as offenders against the peace and dignity of the State. (The fatal weakness of the Prohibitionists' position is their sentimental tenderness for the drunkard.) Next, a more stringent police against prostitution, especially the jailing of every one caught in a house of ill-fame or assignation. Next, public education compulsory upon every minor whose education is not otherwise adequately provided for.

3. For reform of convicts in prison. First, an absolutely proper outward life, enforced by a firm, dispassionate, unemotional discipline. Enough healthful work to keep the body and mind, if possible, active during the ordinary working hours of each day. Good literature and the

observance of the Sabbath. Exclusion at all times, Sabbaths especially of all sorts of idle or sentimental visitation. A system, in short, shall make it at all times obvious that the prisoner is a prisoner for the purpose of making him an honest, harmless, and valuable member of society.

4. Aid to discharged prisoners. They should have at least decent attire, and, if destitute, transportation to some point where the chances are comparatively good for a new start in life. Prisons could have a large correspondence list of benevolent persons willing to have more or less satisfactory and unobtrusive oversight of discharged convicts.

Questions five and six I am not ready to answer, save in a very general way. Juveniles should be under *women's* care, with *male* oversight—the family order. They should be kept in school by force if necessary, and in domestic occupations and sports.

•Very respectfully,

To R. T. DEVLIN, Esq.

G. W. CABLE.

MINNESOTA STATE REFORM SCHOOL,  
ST. PAUL, June 28, 1886.

Hon. ROBT. T. DEVLIN:

MY DEAR SIR: I received this morning your favor of the twenty-first in which you ask questions which would require more wisdom and experience to answer than I can claim to have. There will be a national meeting of representatives from all the States held in our city, commencing July fifteenth, and if you can attend I think you will be well repaid for the journey, and perhaps find a solution of your difficulty.

Very respectfully yours,

D. W. INGERSOLL.

MINNESOTA STATE REFORM SCHOOL,  
ST. PAUL, June 29, 1886.

Hon. ROBERT T. DEVLIN:

MY DEAR SIR: Yours of June twenty-first received; and in answer to first question, idleness and ignorance; to second, education and industry; to third, kindness, justice, and industry; to fourth, if possible, secure employment for them; to fifth, they should be gathered into the reform school, educated in all the common branches, and taught some useful trade; to sixth, provide them a home and education and habits of industry, and there is hope for them.

I write in haste,

D. W. INGERSOLL.

MICHIGAN STATE PRISON,  
JACKSON, MICH., June 29, 1886.

ROBT. T. DEVLIN, *Sacramento, Cal.*:

DEAR SIR: Replying to your questions in letter June twenty-first:

1. What do you consider the principal causes of crime? Answer. Don't know. It is no doubt largely hereditary. Most of them at least couldn't do anything else.

2. What means are most effectual for removing causes? Shut them up until they are either reformed or dead, every time you get one.

3. What agencies do you consider most effective in reforming convicts while in prison? Answer. A good Chaplain who works hard; a good Warden who understand these men, and who has power to get a good corps of officers about him; every one of which will tend to elevate every convict who comes in contact with him.

4. The Connecticut law is good.

5. By kindness as long as you can have good discipline.

6. Take them away from their parents, and do all you can for them.

Exterminate the breed either by confinement or reformation. The most important thing I believe in prisons is to have them, the prison, out of all political control. Then get a good, strong, clean man for Warden, who has no friends to reward, and give him power and he will work out the best. Old criminals are not reformed much; young ones may be. Firmness, hard work, good discipline and kindness, applied as each case requires, and then a strong, able, Christian Chaplain, who don't slobber when business begins, will do all for any prison that can be done.

Very sincerely,

H. F. HATCH, Warden.

HARTFORD, CONNECTICUT, June 29, 1886.

ROBERT T. DEVLIN, Esq., *Sacramento, Cal.*:

DEAR SIR: A complete answer to the several questions propounded in your circular letter of the twenty-first instant would involve such a discussion of the several topics there suggested as I am unable to give; but I will make the following partial answers:

First, I consider the principal cause of crime to be the use of intoxicating beverages. A large proportion of the crimes for which committal is made, are committed under the direct influence of liquor; and the low, debased character, with criminal tendency, which is the source from which our criminals are drawn, is due, in a greater degree, to the use of intoxicating liquors by the persons in whom such character is found, and also by the parents from whom the debasing effect is inherited. No vice in the parent so certainly and markedly debases and perverts the moral, intellectual, and physical natures of the child, as the use of intoxicating liquors. So profound and so widespread is this cause, that it seems to me that until it is so far under control that it can be distinctly measured and limited, we can scarcely specify any other distinct cause of crime. Of course there are certain ones which are found in the natural passions of men; but their exhibition in this day, uncomplicated with some relation to the use of intoxicants, is so small that with my very limited means of observation I am not prepared to assign them their relative place and proportion.

In answer to your second question, as to the most effectual means of abating or removing the causes of crime, so far as those causes are to be found in the use of intoxicating liquors, my own opinion as to the best means of regulating and controlling the sale and use of liquors, and opening a way for a healthy public sentiment, which is, after all, the great controlling agency, is through local option and high license. A general prohibitory law is worse than useless, unless it can be generally enforced. As this is not yet the case in any State, the principle of prohibition should be applied only where it can be made effective; hence the necessity for local option. While in the localities where the prohibitory principle cannot be made operative for want of proper support from public opinion, high license

can easily be made to command an almost universal support, and lead itself to an improving public sentiment.

Your third question is a very large one, and calls for much detail; I will do no more than try to indicate the principle upon which I think prison treatment should be based. I believe all punishment to be reformatory in its purpose, either of the person upon whom it is directly inflicted or upon the spectator, or both. Of course, society, in imprisoning a man, protects itself, and its action is, in one sense, defensive; but it is not, it ought not to be, retaliatory or revengeful, but, having defended itself against the criminal, it should set to work to reform him; and this is to be accomplished by arousing his moral sense, and exciting him to moral action; that is, to self-restraint in obedience to proper principles of conduct. This is a large matter; but it involves, in the treatment of bad men, a constant and clear perception of their guilt, and, at the same time, that continued personal kindness and justice which alone can win the hearts of men. There is no room for mawkish sentiment, which has done much harm, both to criminals and to the cause of prison reform. A man must be led to deal honestly with himself, with his own faults, with his own conscience, and in a manful fashion; and to lead him to do that is the proper end of every exhibition of human kindness and sympathy while he is under restraint. Manual labor and proper instruction, both intellectual and religious, are necessary elements in any reformatory scheme. Those who have to deal with prisoners must never forget that life is in itself a continual school to every creature, and that these miserable creatures in particular are having a severe lesson, and one which God in His providence means should bear a blessed fruit.

Supposing that the efforts to assist discharged prisoners must come entirely from private individuals, or associations of charitable persons, and not from the State, the answer to your fourth question is greatly dependent upon the circumstances in each case. I think it is, in any broad discussion of the matter, somewhat tied in with your sixth question. It is a very serious question, what the State, as such, can do, either for discharged prisoners or for those persons who constitute the class from whom criminals come, although they may as yet have committed no crime. My personal feeling is, that the power of the State is very small in such matters. The State is a purely secular affair, and criminality is a matter of character; and the State has very little to do with that. The instruction which it provides for its future citizens is of an entirely secular character. We perhaps shall make some practical headway if we recognize that here we come upon a ground, and the most important ground of all, which must be covered, not by the State, but by the Christian church; and that salvation is not in the State or its institutions, but only in personal loyalty to Jesus Christ; and that the State does not propose to assist, or hinder, or indeed to have anything to do with any, one way or another. It therefore abandons the fundamental ground, and leaves it to men associated in a higher capacity than that of any civil society; and were the State to undertake any higher function than is suggested by its purely secular constitution and relations, what hope could there be of any proper result at the hands of the practical politician?

One point, in answer to your fifth question, I am very clear upon—that juvenile offenders should be carefully separated from all others, not only because they are young and tender and impressible and more easily reformatory, but because the principle of classification and separation ought to be carried out to the greatest possible extent. Not only ought such young men and women who are criminals, guilty perhaps of their first

offense and not yet hardened in crime, to be separated from those who are hardened and sinful and apparently irreclaimable, and enemies to every reformatory effort, both for themselves and for others; but the same care ought to be exercised in regard to all, whatever their age, who are not hardened in crime. It is little use to try to rouse manhood, and a proper sense of his guilt, and a proper sense of his duty, in a weak, ignorant man, whom you allow to remain in constant contact with a hardened villain who scorns and despises all your efforts. He will more than neutralize them. If you wish to produce effects upon a man's character, he must be put under conditions favorable to the influences which you bring to bear.

With reference to your sixth question, permit me to say that it seems to me the fundamental question here is, how is the State, in its legislative action, to regard crime? It is essentially a moral matter, but the State does not, and perhaps cannot so regard it, because the State has no moral code, except its own artificial one, that is to say, its statute law; that, so far as the State is concerned, is the rule of morals for its citizens. How perfectly inadequate such a basis is to a complete and successful treatment of the matter is obvious from this simple statement. If the State is to regard crime as merely an infraction of its law for the time being, it is difficult to see upon what ground it can undertake or prosecute with any hope of success any reformatory work, or take other measures than those of a distinctively police character. It must remain strictly on the defensive. The moment it abandons that position it must give a new definition to crime, as not only an infraction of the civil law for the moment, but as a matter involving character, which involves obedience to something entirely distinct from, and above, passing human institutions; and if the State acknowledges its need of help here, its first work, it seems to me, in clearing its own way, is to define its own relations to that which lies at the foundation of human character. I am aware that I suggest only difficulties, and not solutions for them; but the difficulties seem to me inherent in our present political conceptions and institutions, and that their consideration is therefore the first step in the whole matter.

Respectfully yours,

JACOB L. GREENE.

HOUSE OF COMMONS, LIBRARY, May, 1886.

DEAR SIR: I am directed by Mr. Parnell to acknowledge the receipt of your letter of the fifteenth ultimo. A Royal Commission took evidence about two years ago in regard to the management of the Irish prisons, and a copy of this evidence can be obtained from the Queen's printers, namely, Messrs. Spottiswood & Co., East Harding Street, London, E. C.

I am yours, very truly,

H. CAMPBELL, Secretary.

MR. ROBERT T. DEVLIN, *California State Penological Commission, Sacramento, California.*

PHILADELPHIA, March 30, 1886.

DEAR SIR: By this mail I have the honor to send you some pamphlets on the science of Penology. If your Commission will look through the pages (I do not expect they will read them), very much will be found to give direction to your line of inquiries, I hope.

Having been forty-five years an Inspector of the Eastern State Penitentiary in this city, some experience has been gained.

With great respect,

RICHARD VAUX

To ROBERT T. DEVLIN, *Secretary, etc., Sacramento.*

Hon. ROBERT T. DEVLIN:

CINCINNATI, April 21, 1886

MY DEAR SIR: Your favor of the fifteenth instant is at hand. It is very gratifying to learn that the Legislature of California has appointed a Penological Commission, and I hope it will be a nucleus for a Board of State Charities, to consider all questions of benevolent, charitable, and reformatory work. The prison legislation of Ohio is largely tentative and experimental; that being the only way that many important questions can be settled. Our experience thus far with the parole system is encouraging and I may say, satisfactory. Some improvements, suggested by experience, will undoubtedly be made. It is the only system yet devised, likely to reform the criminal. We notice one or two points which you can avoid. Paroles ought not to be solicited by prisoners or their friends. Smart lawyers should understand that paroles are not to be given, as, unfortunately, pardons sometimes are, to persistent importunity or influence. They are to be *earned* by the good conduct of the prisoner; by what the Warden and Chaplain, and Penitentiary Directors can ascertain about his character, prospects, and probability of reformation. This is especially important, as sometimes the worst criminals, for their own purposes, are the best prisoners. Properly carried out, the parole system will be a great relief to the Governor, as he will wisely limit his consideration of cases for pardon to new testimony, innocence of prisoner, or serious doubts as to guilt; with, perhaps, an eye to inequality of sentence; but this last great source of injustice, when sixty or seventy Judges of different temperaments sentence prisoners, with great discretion given them by the statutes, will be almost entirely remedied by the parole system.

The parole system is really not complete without another provision, which may seem very severe, but is very important. We make, in Ohio, a great distinction between first offenders and confirmed criminals. After a criminal has been *twice* sent to the Penitentiary, on the *third conviction*, the sentence is for *life*, unless mitigated by the Board of Prison Directors. He is liable to, and will, probably, serve out a life sentence. He is a confirmed criminal, and society has a right to demand his seclusion. There will, probably, be no backward step taken in our reformatory work. The parole system will undoubtedly stand, but it will be guarded and explained more fully, as above indicated.

Permit me to extend to yourself and all the members of the California Penological Commission, and especially to his Excellency, the Governor, a most cordial and hearty invitation to attend the thirteenth National Conference of Charities and Correction, at St. Paul, Minnesota, July fifteenth to twenty-first next, where the whole subject of prison reform, labor, management, in all its details, will be considered and discussed by men far abler than I am to do it justice.

I inclose circular. Thanking you sincerely for the honor done me by this inquiry, I remain, my dear sir,

Very respectfully yours,

WM. H. NEFF.

STATE OF VERMONT, EXECUTIVE CHAMBER, }  
HARTFORD, April 21, 1886. }

Hon. ROBT. T. DEVLIN, *Commissioner:*

DEAR SIR: Yours of the thirteenth instant, relating to matters of prison management, etc., is received.

1. And in reply would say in answer to your interrogatories, that with us the best system of prison labor has been found to be, for the State Prison proper, and also at the "House of Correction," the "contract system;" while our "Reform School" is conducted by the State, the inmates working on the State farm, generally.

2. The pardoning power is lodged with the Executive alone, without advice or counsel of any Board. It is exercised wholly upon such principles of sense and discretion as the incumbent, for the time being, may possess. If he departed from reasonably sound principles in its exercise he would probably be obnoxious to impeachment.

I never heard of any abuse of this power in this State. I nevertheless feel and believe that an advisory Prison Commission, or a Council, should supplement and aid the Executive in this high and delicate trust.

It is a general, self-suggesting rule with our Governors, that the due administration of criminal justice by the Courts should not be interfered with unless for special cause—like newly discovered evidence, or other matter not in view and mind of the Court at time of sentence.

Our laws allow of "conditional pardons," at Executive discretion, as well as absolute.

3. Our practice of a separate institution for youthful criminals, called the "Reform School," is most salutary. I will send you the last biennial report of the same.

4. The subject of giving State aid to discharged convicts, to prevent them from relapse to crime, has never been considered in our State, and I am not adequately informed of any such practice or theory to speak intelligently on it.

5. I am unable to suggest any better practicable method for the prevention of crime, generally, than the customary ones of imprisonment, and execution in capital cases, and no new methods have been tried in this State nor in any of the older States, to my knowledge.

These methods are as old as law, divine or human, and having been relieved of their ancient cruelty, they now seem to have come to the limit of amelioration, and are still penal and as reformatory as would seem possible.

I have the honor to be your obedient servant,

SAMUEL E. PINGREE.

ROBERT T. DEVLIN, *Esq.:*

DEAR SIR: Your letter of April fifteenth is duly received. We have hardly had time in this State to enable us to judge of the workings of the parole system, so far as the prisoners are concerned. Our Board of State Charities were all in favor of its adoption, and if it can be properly carried out we look for valuable results from it upon the discipline of the prison, and as a reformatory influence upon the younger prisoners generally. Under our law of 1884 the prisoner can *earn*, in the cases specified, by his good conduct, as shown by the record, subject, of course, to the sound judgment of the Directors in each case, the privilege of being sent out on parole. The only serious difficulty thus far encountered is that



outside influence is brought to bear upon the Directors, petitions are got up, partisan and family influence invoked, etc.; but we do not anticipate permanent trouble from this source, as the Legislature will probably provide that in each case the grounds of a parole shall be submitted to the Governor and approved by him. It is vital to the parole system that it shall never be extended to a prisoner except as a reward for long-continued good conduct, as shown by the record, and if it is not thus administered it will do more harm than good. It involves a good deal of labor, to keep a daily record of conduct in a large prison, and officers can hardly become thoroughly acquainted with each individual among fifteen hundred or more prisoners, and the parole system in such a prison labors under many disadvantages; but when our intermediate prison is completed, and we come to deal with a moderate number of young men, or men found guilty of a first offense, we shall look for large and beneficent results from it. It will give us pleasure at all times to hear from you, and to coöperate most cordially with your Commission.

Very truly yours,

JOHN W. ANDREWS

COLUMBUS, O., April 24, 1886.

LEGATION OF THE UNITED STATES OF AMERICA,  
BERLIN, June 10, 1886.

ROBERT T. DEVLIN, ESQ., *Secretary of California State Penological Commission, S. W. cor. Fourth and J Streets, Sacramento, Cal.*

SIR: Replying to your letter to this Legation calling for information respecting prisons and prison systems in Germany, I beg to say that, after making inquiry the Legation recommends for your purpose the works on the subject in question which are marked in a catalogue of a leading book-selling establishment in this city, which catalogue the Legation transmits to your address to-day, under a separate wrap. You will no doubt be able to procure such of those works as you may wish through a book-selling or publishing establishment in your city. The following named work, not mentioned on your catalogue, is also recommended: "Grundsätze für den Ban und die Einrichtung von Zellengefängnissen," which is a report on the subject recently made to the Prussian Government by a special commissioner. This last named work costs about eighty-five cents. The price of the other works will be found in the catalogue referred to, expressed in German currency.

I am, sir, your obedient servant,

C. COLEMAN, Chargé d'Affaires.

LÉGATION DE ETATS-UNIS D'AMÉRIQUE,  
PARIS, May 26, 1886.

SIR: Replying to your request of April thirteenth, I have the honor to inform you that this Legation has forwarded to your address, care of the State Department, a package containing a set of printed documents with reference to the prison system of France.

Respectfully yours,

HENRY VIGNAUD,  
Chargé d'Affaires.

ROBERT T. DEVLIN, ESQ., *Secretary California Penological Commission, southwest corner Fourth and J Streets, Sacramento, California.*

STATE OF ILLINOIS BOARD OF PUBLIC CHARITIES,  
SPRINGFIELD, June 24, 1886.

Hon. R. T. DEVLIN, *Secretary State Penological Commission, Sacramento, California:*

MY DEAR SIR: Your letter of the eighteenth May has laid upon my desk till now, awaiting a convenient season.

I think that you would, perhaps, do well to write to—

T. B. LL. Baker, Esq., Hardwicke Court, Gloucester, England.

Mr. T. LL. Murray Browne and Mr. Arthur J. S. Maddison, Reformatory and Refuge Union, 32 Charring Cross, London, I. W.

Mr. William Tallack, Howard Association, 5 Bishopsgate Without, London.

Sir Walter Crofton, Dublin, Ireland.

Should your Commission report in favor of the principle of conditional liberation, take care not to approve of that feature of the Ohio law which allows applications for discharge of prisoners to be presented to the Prison Inspectors. The Elmira Board is forbidden, under the New York law, to entertain any such application; and this is right.

I am, very truly yours,

FRED. H. WINES.

OFFICE OF R. C. BUCKNER, GENERAL MANAGER BUCKNER }  
ORPHANS' HOME, DALLAS, TEXAS, May 25, 1886. }

ROBERT T. DEVLIN, *Secretary, etc., Sacramento, Cal.:*

DEAR SIR: Your letter of the seventh instant reached my desk during a somewhat protracted absence in Alabama and Louisiana. After my return I had but one day at home before an important visit to San Antonio, Texas, from which trip I returned only three days ago, and have since been, and now am, waiting on my sick wife. This will be accepted as a sufficient apology for delay, and for a very brief reply to the very interesting inquiries in your letter. Would be glad of time and opportunity for such a reply as the object of your letter merits.

1. "Do you believe that the State should engage in this work?"—aiding discharged prisoners. I certainly do. The objects of imprisonment should be but two, and neither should be *punishment*. The safety and good of society should be one; the *reformation* of prisoners the other. As attention and kind treatment to a child, after correcting it, are necessary to retain its confidence and love, and to influence it to do better, so with the treatment *upon the part of the State* of released prisoners. In Texas nothing is done in this way, except to furnish the released with a certain quantity of clothing and expense-money to his former community.

2. "Should the State aid private associations?" Only to the amount of the actual cost of postage and stationery, and expense of travel necessary in the work, and that only to organizations non-sectarian and purely charitable, and with officials appointed or approved by the State. This answer is purely theoretical, without any practical experience or personal observation.

3. "What has been your experience with discharged prisoners?" Not extensive yet, but pleasant and encouraging. I have one now in my mind who was imprisoned for murder. He was never abandoned by the hopes or efforts of his friends. His deportment in the penitentiary was excellent and his sentence commuted. After his release, employment and encouragement were given him in the community from which he was sent.

Gradually he arose and established himself, became noted for industry and good conduct, is now even a useful member of church, and a married man. Had he been denied employment and been exiled out of society, his utter ruin might have followed and greater injury to society.

4. "Is it difficult to obtain employment for prisoners?" The greater difficulty is in getting released prisoners to settle down from wandering and accept regular work. In fact this is true with reference to all classes of very wicked and abandoned persons.

I cannot now write further, and in fact I feel that what I have said is scarcely worthy of your attention. My name in this work has gone farther than is justified by my limited knowledge and experience. Texas as a State has not as yet taken hold particularly of the reformatory idea in connection with penology. We have no State Board of Charities, no Penological Commission, and what I have thus far done has been unaided, except a Board of Directors in my orphanage work, to control in a formal, legal way, the property.

Very respectfully,

R. C. BUCKNER.

I have written the above at intervals. I send by same mail a copy of my paper.

SAN FRANCISCO, CAL., October 28, 1885.

To the honorable the State Commissioners of Penology:

GENTLEMEN: Your earnestness will lead you to pardon this intrusion, made after considerable hesitation, upon the attention of gentlemen no doubt far better acquainted than I can be with the subject committed to your investigation by the Governor and the Legislature of the State; but in the hope that my suggestions may be of some service to you in your labors, I venture to call your attention to the following causes of the excessive prevalence of crime among us, as also to some sources of useful information as to its cure.

1. Defects in our educational methods.
2. Defects in our legal—especially penal—procedure.
3. Defects in penal discipline.

Notwithstanding the extensive literature extant upon these two last named classes, you will find that the writings of Jeremy Bentham still afford an exhaustless fund of *original* knowledge, as indeed they do upon every branch of legislative science, so unhappily neglected by all our universities and law schools.

Theory and experience led me to the conclusion that fully one half of *first convictions* are of innocent persons. This conclusion was concurred in by my friend, the late Mr. R. Dugdale, for many years Secretary of the Prisoners' Aid Society of New York. To avoid misunderstanding, I add that this includes convictions of children, who had no idea of actual wrong in the acts for which they were convicted. This evil is the result of the above named errors numbered 1 and 2. Once convicted, the innocent victim generally becomes a member of the criminal class—result of error above numbered 3. A careful study of the work of Captain Machonachie in Ireland will fully repay your honorable body for the labor bestowed thereon.

Although Mr. Dugdale's too early death deprives you of a wonderful reservoir of information, the society he so ably served can, and I feel sure will, with gladness render you valuable aid.

Again apologizing for this intrusion, which I am sure you will attribute to its true cause, viz., sympathy with the objects of the new labor intrusted to you—I have the honor to be, gentlemen,

Yours, respectfully,

MONTAGUE R. LEVERSON.

CHICAGO, June 28, 1886.

ROBERT T. DEVLIN, *Secretary, Sacramento, California:*

In reply to the queries in yours of twenty-first, I have to say:

1. Heredity and intemperance.
2. Public discussions, newspaper articles, and other means to arouse public opinion and direct public attention to them, and judicious legislative action as far as is practicable.
3. *First*—Religious instruction. *Second*—Labor. *Third*—Education.
4. Find suitable places for them where they can obtain employment, and, as preparatory to this, establish homes, where they may be employed until some suitable places are found. An example of such a home exists in New York, and, on a small scale, here.
5. First in *small* institutions, where they can be trained to habits of industry and suitably instructed and prepared for homes in the country.
6. A very comprehensive question. *First*—For those simply destitute and unfortunate, find homes in private families as far as possible. *Second*—For those from the criminal classes treat as in No. 5.

These are *condensed* answers; many pages would be required to elaborate them fully. They will all be fully discussed at the approaching session of the Conference on Charities and Correction to be held at St. Paul, July fifteenth, at which your Commission will no doubt be represented.

Very respectfully,

C. F. COFFIN.

CHICAGO, June 26, 1886.

ROBERT T. DEVLIN, *Esq., Sacramento, California:*

SIR: Your circular letter came to hand. I have given the subjects covered by your questions much consideration, and as a result, put my views in as short a space as I could, and published them in a pamphlet of a little over one hundred pages.

As I cannot at present add much to what I have therein advanced, I send you by mail a number of copies. Should you find the book of much use to you, I will gladly furnish more, as it is a subject in which I feel a deep interest.

Thanking you for writing me, I remain,

Yours, very truly,

J. P. ALTGELD.

ELMIRA, N. Y., July 9, 1886.

ROBERT T. DEVLIN, *Esq., Secretary:*

DEAR SIR: Yours June twenty-first has been received, and for reply I inclose statement from Z. R. Brockway, General Superintendent of the New York State Reformatory, located at this place.

It seems to me that the plan in force at this prison, as applied to young men and boys, is about the best that can be devised.

Respectfully,

M. H. AMOT.

ELMIRA, N. Y., July 7, 1886.

DEAR SIR: Referring to the California Commission's inquiries, in the letter which I received to-day, I beg to say that Mr. Hendricks, Chairman of the Commission, spent a Sunday with me here last December, and I wrote him afterwards, making quite a full answer to the list of interrogatories he left with me, covering some of those now propounded by Mr. Devlin, his colleague.

Categorical replies to the six questions would, in my view, be something like the following:

1. The principal causes of crime are, primarily, defective human nature, in contrast with the requirements of cultured society. The more immediate causes are, with the prisoner, ignorance, improvidence, and indigence.

2. It follows then, that the most effectual means for removing these causes (by treating the prisoner), is *education*; this includes physical training, mental growth, and moral impression—an education that includes, as a necessity, industrial and manual exercises.

3. The agencies most effective in reforming convicts while they are in prison are precisely those agencies most effective in forming good citizens in free society, namely:

a. The necessity of earning our own living legitimately, and to accumulate for future needs.

b. An educational system that results in increased mind power, and power to earn, and to influence others in public affairs.

c. Influences, esthetical, moral and religious, that refine the tastes, restrain impulsive action, and stimulate the better moral emotions.

4. The best aid to discharged prisoners, is that rendered by the prison authorities while holding the prisoner under legal control (on parole), by employment and supervision, with only such aid as is necessary to put him into a self-supporting condition.

5. The question, "How should juvenile criminals be cared for?" is not quite clear. If it refers to the two systems, the institutionary and family plans, I should reply by a combination of both; beyond that, the same principles that apply to the treatment of adults should apply to juveniles, modified in their application, of course, as may be found wise in each particular case.

6. The State can do much more than any State I know of is now doing to save uncared-for children from a criminal life, by their care in such institutions as the State Public School of Coldwater, Mich., by manual and industrial training as a part of the public school course of instruction, and by a compulsory education Act *really enforced*.

Truly,

Z. R. BROCKWAY, Superintendent.

CALIFORNIA STATE PENOLOGICAL COMMISSION,  
SACRAMENTO, CAL., June 24, 1886.

The Legislature of California has created a Commission to report to the next Legislature measures for the improvement of prison management, care of juvenile criminals, aid to discharged prisoners, the more effective prevention of crime, etc.

Will you have the kindness to aid the Commission by giving us your views upon some questions which are of special importance in the solution of these problems.

1. What do you consider the principal causes of crime?

2. What means are most effectual for abating or removing these causes?
  3. What agencies do you consider as most effective in reforming convicts while they are in prison?
  4. What aid should be given to discharged prisoners to prevent them from falling again into crime, and to assist them in obtaining employment?
  5. How should juvenile criminals be cared for?
  6. What can the State do toward saving the uncared-for children from a criminal life?
- A prompt reply will be appreciated.

Yours, very respectfully,

ROBT. T. DEVLIN.

#### ANSWERS TO FOREGOING INTERROGATORIES.

1. Inherited depravity, augmented by strong drink, and the temptations of city life to the youth.

2. Hold parents to a stricter responsibility for the conduct of their children during their minority, diminish the temptations of saloons and the resort of the vicious, enact wise penal laws, and administer them with uniformity and certainty.

3. Hard labor, substantial food, strict discipline, administered with kindness and sympathy.

4. A work establishment, where wages can be paid and a certificate of good conduct given on discharge. This should not be confined to ex-convicts, but all tramps and unemployed who apply should be received. By this means it would not be regarded simply as an ex-convict's refuge, and shunned for that reason.

5. In reformatories, on the family plan, strictly graded, according to character and disposition. Farming and all trades to be carried on for their instruction.

6. Establish schools for dependent children. Finally, pay salaries adequate to secure the best men, and avoid changes as much as possible.

M. W. CARTER, Warden.

WISCONSIN PRISON.

FLINT, MICHIGAN, July 5, 1886.

ROBERT T. DEVLIN, *Secretary of the State Penological Commission for the State of California*:

MY DEAR SIR: I have the honor to be in receipt of your communication of June 22, 1886, asking for my views in regard to crime and its prevention. The question is one of great importance, and one on which wise men have studied hard for several years past, and vary very much in their opinions.

1. The principal causes of crime, in my humble opinion, are idleness, want of proper employment, and the use of intoxicating drinks.

When times are good and there is plenty of employment for our people there is but very little crime. We have a law on our statutes compelling our schools to teach all students the effect of alcohol on the human system, that I believe will result in great good to the rising generation.

2. For reforming prisoners while in prison. This is a hard question to answer. This is a matter that I have given much thought and study to. My experience with prisoners or convicts is that the most hardened, and

with the least hope of reformation, are the ones that give the Wardens the least trouble and behave themselves the best. Reformation can only be brought about by kindness, and how to most effectually administer that noble attribute is very difficult to determine by our Wardens. I would not sentence for any definite time; I would leave the time to the discretion of the Prison Board. When the proper time to let the convict out came, then I would let him out on ticket of leave, and for the first offense committed return him to his old cell.

3. I believe it the duty of the State, in discharging a convict, to provide in some way—I can't tell how—for him to get employment until he can sustain himself.

4. We have tried the experiment on the boys in our Reform School, giving them ticket of leave, and the system works admirably. We have fifty of that class in Detroit. Once in every month the Warden of the Reform School for Boys visits Detroit, and all the boys are required to meet him at a certain place and on a certain day. They go, and meet him with as much pleasure as a child would meet a kind father. They tell him all of their troubles, and their success. This experiment has been tried for two years, and I believe that not one has been returned to the old school at Lansing. The same treatment is extended to many of the girls in our reformatory—Industrial School for Girls—and I believe would work well with all convicts.

5. I have stated how we treat our boys and girls in our reformatory.

6. We have a State school for children from two to eight years old; the average number is over four hundred. I consider it one of our very best institutions. Children are taken in there and well cared for, well educated, and good homes are soon found among the people for the most of them, generally, with good effect.

I have inclosed to you a package of pamphlets; perhaps you may glean something from them that will be of importance to you. I spent last Winter in your State; it has a large promise for being, in the near future, one of the great States of this Union.

With great respect, I am truly yours,

J. W. BEGOLE,  
Ex-Governor of Michigan.

UNITED STATES SENATE,  
WASHINGTON, D. C., July 6, 1886.

ROBERT T. DEVLIN, *Esq.*, southwest corner Fourth and J Streets, Sacramento, Cal.:

DEAR SIR: I have the honor to acknowledge the receipt of your circular letter of the twenty-eighth ultimo, asking my views upon certain questions concerning the improvement of prison management and the care of juvenile criminals.

I have never made the subject a study and am not qualified to answer your questions, but will refer you to Rev. T. L. Elliot, of Portland, Or., who, I believe, has given the subject some thought and will take pleasure in responding to your inquiries.

Yours truly,

J. N. DOLPH.

HOUSE OF REFUGE, RANDALL'S ISLAND,  
NEW YORK, July 8, 1886.

ROBERT T. DEVLIN, *Esq.*, Secretary, etc., Fourth and J Streets, Sacramento, Cal.:

DEAR SIR: Replying to yours of the twenty-second ultimo in the order of the questions, I beg to say:

1. That I consider the omission of proper training and instruction of children when young, and the want of proper guidance, as the chief cause of crime. Other causes are assigned, but on careful examination they are found to originate principally in neglected childhood.

2. If the above is true, to remove the cause is to take care of the children.

3. I have had little opportunity to observe the effect of reformatory agencies upon adult criminals. As these, however, relate to juvenile delinquents, I regard good discipline, a judicious and effective system of industrial, mental, and moral training, and good example as paramount in importance.

4. The convict, on discharge by expiration of sentence or by pardon, should be afforded an opportunity to work; he should also receive social recognition as far as the well-being of society will permit, and be encouraged to hope for full restitution if he perseveres in an honest, upright course. Pecuniary aid in some cases is required, and should be given, but always with great care that it may be properly used.

5. In addition to industrial, mental, and moral training, the juvenile delinquent should be afforded the opportunity to acquire a trade, or some useful occupation, on arriving at a proper age; and if this cannot be accomplished by apprenticing, then the institution should, as far as possible, provide the necessary facilities. They should not be brought in contact with adult convicts, and their place of confinement should not be in the neighborhood of an adult prison.

6. The State should take under its fostering care the uncared-for children, and provide for their instruction in all respects as they and the welfare of society require. But the parents whose duty it is to provide thus for their children should not be absolved from bearing the expense to the extent of their ability. There is great danger that the liberality in these institutions may encourage parental neglect, and so defeat in a measure their object.

Respectfully yours,  
ISRAEL C. JONES, Superintendent.

STATE OF NEW YORK, OFFICE OF THE AGENT AND WARDEN OF  
SING SING PRISON, SING SING, July 12, 1886.

ROBERT T. DEVLIN, *Esq.*:

DEAR SIR: I have the honor to acknowledge the receipt of your communication of twenty-second ultimo, and in answer to your questions would say:

1. The causes of crime are so numerous as to make it nearly impossible to make an intelligent answer to your question. The first and greatest cause of crime is the lack of proper parental discipline.

3. The most effective agency in reforming convicts is a habit of industry.

4. An agency, with funds from the State, for procuring employment.

I have left unanswered numbers two, five, and six, for the reason that my opinion would be of no more value than any other person's.

Yours, most truly,

A. A. BRUSH  
Agent and Warden.

STATE OF MINNESOTA, OFFICE OF THE BOARD OF CORRECTIONS AND  
CHARITIES, STATE CAPITOL, MINNEAPOLIS, July 14, 1886.

MY DEAR SIR: I have pleasure in replying to your valued communication of June twenty-first, to which I shall be pleased to reply a little later on. Meantime, let me extend to your people sincere congratulations on the appointment of your Commission, and the evident purpose to deal intelligently with crime and criminals.

Sincerely yours,

DAVID C. BELL.

ROBERT T. DEVLIN, *Secretary, etc.*

ALAMEDA, June 7, 1886.

Hon. W. C. HENDRICKS, *President Penological Commission, etc., Sacramento.*

DEAR SIR: I regret that the state of my health at present does not permit me to go to Sacramento, as I have been invited to do, or to discuss the subjects which will occupy the Penological Commission at its meeting to-morrow. My views on prison reform and "preventive" work have been frequently expressed in papers and reports which I have sent to you and to Governor Stoneman and others, and they are sufficiently indicated in the report to the Governor, which I forward to you by this mail. There are other institutions besides the State Prisons which will require your attention, and the aggressive movement for the suppression of incipient juvenile delinquency through a State censorship, suggested in that report, might perhaps be worthy of consideration, and the formation of "prisoners' aid societies" on principles of *proved practical utility* would also be an important subject for discussion. On these and coördinate matters I have a large amount of documentary information besides that contained in the list appended to that report. All the information I possess is entirely at the service of the Commission, and I shall be glad to confer with you or any of its members, and to aid you in your important work as improved health may enable me to do. Wishing you all success in the great work for this State in which you are engaged, I am,

Your faithful friend and servant,

E. R. HIGHTON.

P. S.—I beg especially to call your attention to Mr. Charlton T. Lewis' letter appended to my report, and to his able paper before the convention at Detroit, and to his letter to the *Chicago Daily News* of the twenty-first of April, and also to Mr. Brockway's reference to Mr. Lewis' statements in the *Chicago Daily News* of April twentieth, showing the alarming increase of crime in this country and its wonderful decrease in Great Britain, coincident with their recent reforms in prison management.

E. R. H.

UNITED STATES LEGATION,  
RIO DE JANEIRO, June 18, 1886.

ROBERT T. DEVLIN, *Esq., Commissioner California State Penological Commission:*

SIR: In reply to your letter of May first, I am instructed by Minister Jarvis to say that he is not able to furnish you with the desired reports upon the prison system of Brazil, no such reports having been published to his knowledge. Should he be able to obtain any printed matter upon the subject it will be promptly forwarded you.

Respectfully,

C. B. TRAIL, *Secretary.*

GILROY, CALIFORNIA, June 7, 1886.

Hon. ROBERT T. DEVLIN, *Secretary State Penological Commission:*

MY DEAR SIR: Herewith I beg to acknowledge receipt of an invitation to be present at a meeting of your Commission to be held June 8, 1886. It would give me great pleasure to be able so to do, but at this writing I cannot attend.

It is fearful to contemplate the amount of material which is maturing for prisons. For a few general ideas I would suggest:

1. The placing of prison management in the hands of men of large experience, liberal, kind hearted, *but very firm.*
2. All convicts should be sent to one prison and immediately graded. A law should be passed that third-termers should receive an equivalent to life.
3. The ticket of leave is a good thing and will work well under proper restrictions.
4. The State should spend more money for the prevention of crime, instead of the punishment, but it will take years of time, I fear, before much will be accomplished.

Regretting greatly my inability to attend, I am,

Your humble servant,

A. G. HINMAN.

OFFICE OF NEW JERSEY STATE REFORM SCHOOL,  
JAMESBURG, N. J., July 10, 1886.

Hon. ROBERT T. DEVLIN:

DEAR SIR: Yours asking my views for improvement of prison management, etc., is at hand. I will answer in brief upon the points with which I am most familiar.

1. I consider *rum* and *idleness* the *principal* causes of crime.
5. Juvenile delinquents should be cared for in State reformatories on the open or family plan; the families not too large—from thirty to forty for boys, twenty to thirty (or better ten to twenty) for girls. These should be officered by a high-minded Christian man and wife. A definite number of hours each day should be devoted to active employment of some kind; the more the children can be interested in it the better. If a diversified system of labor can be provided for different days, so much the better, and to gain the attention and incite the interest in the work, a reward for excellence or for overwork should be given. Some part of each day should be set aside for schooling in the elementary branches of English education. The children should be *trusted*, and made to feel that dependence

was placed upon them, and that they should have confidence in themselves in order to receive the confidence of others; and just so soon as they can be trusted as established in good principles they should be released upon parole, by indenture to some good families, unless their own homes are known to be good in character, and they should be regularly visited and obliged to report to the institution, and public sentiment raised to the point of sympathizing with and aiding them, and not to look upon them as ex-convicts in any sense.

Yours, very truly,

IRA OTTERSON, Superintendent.

ALAMEDA, July 23, 1886.

DEAR SIR: I received your circular of the twenty-first June, in due course, but my state of health compelled me to defer my reply until it improved. In consonance with long continued efforts for a reform of our prison system and "preventive" measures for this State, and as far as compatible with my relations to the movement for which your Commission was appointed, I beg to offer some suggestions—the result of my experience and observation—in reply to your inquiries, and I beg to forward to you a copy of the proceedings of the "National Conference of Charities and Corrections," held at St. Louis in 1884, at which I was present, and which contains some information on prison management and "preventive" measures.

I also send you a copy of my report to Governor Stoneman after I had returned from my visit to the East, as Commissioner from this State, which is, I believe, in the possession of those members of the Penological Commission who were Prison Directors at that time, and to which reference will be made in my answers to your inquiries.

These inquiries I now answer in rotation:

1. The fundamental cause of crime is, of course, general human depravity, as referred to by Mr. Hendricks in the *Chicago News* of April 16, 1886, and the inefficiency of existing agencies to eradicate or correct it. The prevalence of crime and its alarming increase in this country is owing, in my opinion, mainly to executive indifference and incapacity—to vain, egotistical, and sentimental attempts to construct remedial measures with little regard to adequate experience, resulting in lax and absurd methods of penal discipline, thus inviting professional criminals from other countries, diminishing the wholesome dread of penal consequences, and infusing the social estimates of crime in the community.

2. In various reports and papers in the possession of, or accessible to the Commission, I have fully expressed my ideas on this subject.

3. Total reform of county jails, police lockups, and all places of preliminary confinement of prisoners charged with crime, so as to insure complete separation of untried prisoners. For convicted prisoners, lengthened preliminary separation and progressive discipline, embracing useful labor, spiritual and moral instruction, kindly but firmly administered, based on genuine Christian principles of hope for the repentant, but demonstrating that "the ways of transgressors are hard," and that no craft or subtlety can evade the consequences.

4. "Prisoners' Aid Societies," with some official recognition, and which would have an effective agency to meet and take charge of prisoners on their release, as practiced by the St. Giles and the Dublin Prison Gate Mission, etc., and as described by General Brinkerhoff, in his report to

Governor Hoadley of Ohio, at page 20 of the ninth annual report of the "Board of State Charities," and as referred to by Dr. Byers, of Columbus, Ohio, in the *Chicago News* of April 10, 1886.

5. By distributing them among eligible homes through the country and in reformatories. See, also, the answer to number six.

6. By encouraging all subsidiary agencies for elevating the moral condition of the rising generation, through kindergartens, infant shelters, and other "child-saving" institutions. In general, in reference to this and the preceding question, I would specially refer to the proposition referred to in my accompanying report to the Governor, for the establishment of a State Censorship. (See pp. 14, 15, and 16.)

In addition to these suggestions, I would beg to refer to my letter to Mr. Hendricks, of the seventh of June, in which I offered to place at the disposal of the Commission a large amount of documentary information whenever they shall apply for it.

I am, your faithful friend and servant,

E. R. HIGHTON.

ROBERT T. DEVLIN, Esq., *Secretary State Penological Commission.*

ALBANY, July 20, 1886.

ROBERT T. DEVLIN, *Secretary, Sacramento, California:*

DEAR SIR: I have just returned from a considerable absence, or your circular letter of twenty-third would have received more prompt attention.

I have not time to prepare an extended article upon the points you name, but send by this mail some pamphlets that I have prepared from time to time regarding prison labor.

I will say in brief, replying to your questions:

1. Intemperance.
2. The abolishment of saloons.
3. Regular, systematic labor.

4. Supplementing number three, give the convict an opportunity to earn something each day that shall be placed to his credit on good behavior, that he may have a sufficient sum on leaving the prison for support while looking for employment. Crime is almost a necessity for a large majority of convicts who are discharged with \$3 to \$5.

5. It is difficult to suggest a better system than now generally in practice in the South—confinement with teaching in the rudiments, teaching trades or agriculture to the males, and housework and needlework to the females.

6. Make "union labor" rules a penal offense, which forbid the employment of apprentices except in restricted numbers.

Very truly yours,

JOHN S. PERRY.

STATE OF MICHIGAN, BOARD OF CORRECTIONS AND CHARITIES, }  
GRAND RAPIDS, MICH., Sept. 4, 1886. }

Mr. ROBT. T. DEVLIN, *Secretary California State Penological Commission:*

MY DEAR SIR: I received your circular of questions June 21, 1886, some time since. I had intended sending replies, but my engagements have refused me the time.

And indeed, I doubt whether any information or impressions I could give you, would be at all comparable in value to much that is in print, as



in reports of the National Prison Association and National Commission of Charities.

The study of these questions is exceedingly difficult, and even discouraging. I find myself constantly compelled to change my sentiments.

I have no doubt that you will be able to develop a much better system of prison management than we have in our older States.

The points that would seem to me most worthy your attention are:

1. The separation of first offenders, especially those whose crime is light, from old and hardened offenders.
2. Dealing with children of evil proclivities, or who have committed slight offenses, *outside* of prisons and reformatories.
3. Making commitments of children as *private* as possible.
4. Providing for discharged prisoners their immediate care and securing them work.
5. Securing the State Prisons and Reformatories from *political* influences.
6. Making the common school system more preventive of crime, by teaching social science, morals, American institutions, etc.
7. Promoting industrial education.

Yours, very truly,

GEO. D. GILLESPIE,  
Chairman Michigan State Board of Corrections and Charities.

STOCKHOLM, SWEDEN, August 22, 1886.

ROBERT T. DEVLIN, *Esq., Secretary, etc.*:

DEAR SIR: In reply to the circular of the California State Penological Commission, dated June 24, 1886, and forwarded to me, I take up the questions in order:

1. First, intemperance; second, lack of education. I use the word "education" in its largest sense, as meaning the drawing out of the mental faculties and so directing them that every human being can and will employ them for the support of himself.
2. First, as to intemperance, I think the plan of "high license" the most practicable to start with. If kept free from politics, I believe the plan adopted in Bergen, Norway, would work admirably. It may be the best plan. Second, as to education, the teaching should be both in school and family. The plan of "free kindergartens" in connection with "societies for organizing charity," if universal, would, I believe, work a complete change in the present condition of morals. That plan is the best because it begins at the beginning, and it is the cheapest and most effective. It takes the children from the dark alleys and dirty streets, and indifference, neglect, unkindness, ignorance, are gone. The little ones are returned into the human family—a membership to which they are entitled by birth-right. Of course the plan necessarily leaves out those grown up. Outside of the influence of religion, the training or restraining of these must be of a kind more or less harsh—in reformatories or prisons. But at death their places are not filled by the rising generation. On the subject of "free kindergartens," I commend to your attention the pamphlets and reports issued by the "Free Kindergarten Society of Philadelphia," and other kindred societies. The work of the Society for Organizing Charities, with its different branches throughout the country, is a necessary adjunct to that of "free kindergartens." The work of these two systems has shown, with the quickness of a revelation, a new meaning to the word "charity," and

the old idea of alms giving is now the exclusive right of the mediæval poet and painter.

I have not sufficiently studied the matters in queries 3, 4, and 5, to give any answer of likely value.

6. I think the State should pay the cost of the establishment and maintenance of free kindergartens and of kindergarten normal schools. I leave out the support of the "Society for Organizing Charity" as possibly being better undertaken by municipal authority.

Yours, very respectfully,

THOMAS HOCKLEY.

BUENOS AYRES, July 19, 1886.

Mr. ROBT. T. DEVLIN:

MY DEAR SIR: Yours of May first, directed to the Minister at this place, in which you request reports on Argentine prison system, is received. All reports published by this government are printed in the Spanish language only. I am not sure about the publication of their prison reports, as this government is not so far advanced as our own in such matters. However, I will ascertain at the earliest opportunity, and if I find any documents on the subject, will take pleasure in forwarding you the same.

I am, sir, yours very truly,

READ HANNA.

Mr. ROBT. T. DEVLIN, *Sacramento, Cal.*

PENITENTIARY BRANCH, OTTAWA, July 24, 1886.

ROBERT T. DEVLIN, *Esq., Secretary and Commissioner California State Penological Commission, Sacramento, Cal.*:

DEAR SIR: I have the honor to acknowledge the receipt of your circular of twenty-fourth June, and to express my regret that the delay in replying to it has been caused by my absence from Ottawa.

It affords me much pleasure to give you my views—*quantum valeant*—upon the questions submitted in your circular. It is, of course, to be understood that I do this from a Canadian standpoint.

1. The want of moral and religious training in growth; afterwards, evil associations leading to drink and immorality, I regard as the fruitful sources of crime.

2. The school, where secular and religious education is judiciously and carefully combined, under proper and competent supervision. The juvenile reformatory, such as may be found at Detroit, Montreal, and Boston, conducted by the Belgian Brothers, where the boys attend school for a certain number of hours daily and devote the remainder of the time to learning such trades as they are fitted for by inclination and physical capacity. The united efforts of the clergy of all denominations in advocating temperance, exposing and denouncing vice and crime, and in exhorting their flocks to lead good and virtuous lives. A stringent license law, the suppression of low grogeries, gambling dens, and places of evil resort. A thorough reform of the common gaol system. In Canada, the city, town, and county prisoners are, for the most part, training schools where youthful and comparatively innocent offenders against the law, through idleness and contact with hardened criminals, graduate to the penitentiaries.

3. Separate confinement, with uninteresting employment, such as oakum picking, and enough food to preserve health, should the sentence extend

over two years. This affords the prisoner time and opportunity to enter into himself, to reflect upon his past life, to make good resolutions for the future, and to become acquainted with the rules and regulations of the prison. The earning of remission time, and the wearing of badges on the sleeve of the coat, or on the cap, as the rewards for good conduct and industry. A well-managed school for the ignorant, a library of good and judiciously selected books for those who desire to take advantage of this means of improvement. An annual grant should be made by the Government—as in Canada—for the maintenance of the school and library. The isolation of the habitual and hardened criminals, upon being guilty of any misconduct, from the better disposed class of convicts. Perfect freedom of conscience. Any tyranny or coercion in this direction is certain to culminate in hypocrisy, discontent, or even resistance to authority; it is fatal to true reformation. Hence, I consider the ministrations of a Roman Catholic chaplain absolutely necessary for the effective reformation of Roman Catholic convicts; and for this reason a Roman Catholic chaplain is appointed to every penal prison in Great Britain and Ireland, and to each penitentiary in the Dominion of Canada, and paid at the public expense. A participation by each convict in his earnings, over and above what is necessary for his maintenance while in prison. The selection of men of high moral character, competent, and experienced, to constitute the prison staff. The Warden, or Governor, in addition to his other necessary qualifications, should be a gentleman in the strict and true sense of the term.

4. The establishment of prison gate associations, with the view of looking after and supporting discharged convicts until provided with employment, has accomplished great good in England, and also in Toronto, Ontario. The learning of a trade and the habit of industry, acquired while in prison, should be of the utmost advantage in enabling the liberated convict to gain a livelihood, unless he be utterly depraved and bereft of all manly spirit. Police supervision, when exercised with care and discretion, is found here to be a very efficient means of preventing relapse into crime.

5. In such a reformatory as is referred to in the answer to the second question. The excellent results can be easily ascertained in the cities mentioned.

6. Establish industrial schools where uncared-for children will be educated, taught some trade, and be brought up in the religion of their parents. The State is bound to respect and recognize the right of even parents who neglect their children to have them brought up in their own faith, if removed from their custody and control.

I have endeavored to treat these important questions as briefly as their nature and scope would permit. I regret my inability to offer any suggestions worthy the consideration of the Commission, whose deliberations and labors in so good a cause I earnestly pray the Almighty God will bless and crown with lasting success. I have the honor to be, dear sir,

Yours, very truly,

JAMES G. MOYLAN, Inspector.

PUBLIC INSTITUTIONS, DEER ISLAND,  
BOSTON HARBOR, August 3, 1886.

Mr. ROBERT T. DEVLIN, *Secretary, Sacramento, Cal.*

DEAR SIR: Yours of June twenty-ninth came duly to hand. The questions are so important, some of them at this age even being still open for discussion, that I hesitate a reply; I will, however, give my views briefly:

1. Rum; ignorance; desire of many to live in idleness.
2. Education; work; prohibit cohabitation of the crime class; long sentences, especially for incurables.
3. Labor and education.
4. A trusty agent, but little money.
5. Provide good homes as soon as possible after a period of confinement and schooling, away from cities.
6. Take charge of them while young, and provide good homes as suggested in No. 5.

Yours, respectfully,

JOHN C. WHITON, Superintendent.

LEGATION OF THE UNITED STATES,  
VIENNA, July 14, 1886.

ROBERT T. DEVLIN, *Esq., Sacramento*:

SIR: Mr. Strong, the former Secretary of Legation here, has just forwarded me your letter to him dated April twenty-seventh, thinking that possibly I possessed the information you desire. In reply, I beg to say that when Dr. Coggeshall, of Newport, R. I., a delegate to the International Penal Congress, was here I obtained for him every possible facility for examining the subject, as well as the penal institutions of this country. He is at present more familiar with the subject than any one I know of, and I feel sure would be happy, should you apply to him, to give you the results of his investigation.

Respectfully,

JAMES FENNER LEE.

UNITED STATES LEGATION, CHILI,  
SANTIAGO, August 14, 1886.

ROBERT DEVLIN, *Esq., Secretary California State Penological Commission, Sacramento, Cal.*

DEAR SIR: In reply to your letter of May first, on behalf of the California State Penological Commission, I beg to inclose to you under separate cover, three printed pamphlets, and a report of the Superintendent of the Santiago Penitentiary inclosed herewith, the latter written especially for your information.

I am indebted for these favors to the Hon. Francisco S. Asta-Buruaga, Chief of the Statistical Bureau, and formerly Minister to the United States.

I have the honor to remain, sir, your obedient servant,

WILLIAM R. ROBERTS,  
E. E. and M. P., U. S. A.

SUPERINTENDENCIA DE LA PENITENCIARÍA,  
SANTIAGO, Agosto 12 de 1886.

DISTINGUIDO AMIGO: En contestacion á la suya en que me pide le envíe, para la Legacion Norte-Americana, todas las publicaciones hechas en el país, referentes á las penitenciarías y demas establecimientos penales, me apresuro á remitirle un ejemplar del reglamento de la prision de mi cargo y un libro, escrito por uno de los empleados de la misma, espres-

samente para obsequiarlo á las personas que suelen visitarla. Fuera de esta publicacion y de artículos mas ó ménos interesantes, que en diversas ocasiones han aparecido en los diarios de Valparaiso y Santiago, no sé que algun otro trabajo sobre prisiones ó sistemas correccionales haya visto la luz pública en la República.

Pero, como lo que me permito enviar á V. apenas si reviste alguna importancia que solo nos es dado apreciar á los hijos de Chile, he creído conveniente manifestarle, aunque sea á la lijera, las condiciones del sistema correccional observado en esta penitenciaría, que es, con algunas modificaciones, por supuesto, el llamado de *Auburn*, muy conocido en los Estados Unidos.

Segun el órden establecido, los reos deben trabajar en comun durante el dia y dormir separados por la noche, con la obligacion de observar un riguroso silencio.

En virtud de este procedimiento, solo pueden conocerse los que habitan en un mismo departamento, pues, fuera de la hora de misa, á que asisten en los dias festivos, jamas se reunen todos los existentes en la prision.

Todos los movimientos que se hacen por los condenados en la casa,—sea por su salida de las celdas, en la mañana, ó por su encierro en ellas, en la noche, sea por su traslacion de un punto á otro de la penitenciaría, ó por que así lo requiera el trabajo en los talleres, á que todos, con excepcion de los enfermos, están sometidos,—obedecen, como medida de precaucion para que el órden no se interrumpa, á señales de pito, dadas por los respectivos guardianes.

El trabajo de los talleres está circunscripto á estas cinco industrias: Zapatería, carpintería, herrería, y carrocería, panadería y litografía, las cuales se explotan por empresarios particulares, en virtud de contratos que duran de cuatro á seis años.

Á los reos se les enseña el oficio correspondiente al taller á que fueren destinados, y, segun lleguen á ser sus conocimientos como obreros y la conducta que observen como presos, pueden obtener algunos beneficios pecuniarios, que se estiman, en la generalidad de los casos, en la cuarta parte de los que alcanza un trabajador libre.

Reconocida la suma que semanalmente corresponde á cada reo, se le señala una parte de ella para que la destine á mejorar su condicion en la casa, comprando ciertos artículos, como café, tabaco, etc., ó ropas interiores,—las exteriores las suministra la penitenciaría,—y se le reserva el resto para su familia ó para que lo reciba el mismo el dia que salga en libertad.

En la casa se prefiere que el condenado ausilie á sus hijos, esposa, ó padres, por que con ello, aparte del estímulo que se forma con esta comunicacion, por decirlo así, generosa, entre dichos seres, se establece una enseñanza de inestimables consecuencias, cual es la de hacer saber al delincuente el modo honrado como debe socorrer á sus hijos ó á la madre de sus hijos, obligacion que le era completamente desconocida.

La penitenciaría, por su parte, con el trabajo de los talleres en la forma indicada, obtiene su beneficio de relativa consideracion.

En el presente año, por ejemplo, tendrá una utilidad que subirá de \$16,000, utilidad que en los años siguientes será todavía mayor, toda vez que progresando los presidarios en sus conocimientos del oficio en que se les emplea, es natural que á medida que la ganancia de los contratistas aumente, los derechos que les corresponda pagar al establecimiento se aumenten del mismo modo.

El trabajo, como dejo dicho, es obligatorio en la prision. El preso no es dueño de elegir tal ó cual taller, sino que debe concurrir, formado en el departamento á que se le hubiere destinado, al que uno de los jefes de la

prision le designase, y trabajar en él la tarea que con arreglo á sus aptitudes ó conocimientos, le fijase el respectivo empresario.

Si no se procediese así, la penitenciaría no sería una prision, porque en ella la pena solo consiste en el *continuo trabajo*; pues la privacion de la libertad, que en muchas otras naciones se estima como castigo severísimo, nada importa para el malvado que en Chile hace profesion del crimen.

Y tanto es así lo que manifiesto á V. que ántes del año 1876, época en que los presidarios trabajaban en la casa como y cuando querian, las reincidencias llegaban anualmente á casi la cuarta parte de los reos que ingresaban; al paso de que hoy, mas bien dicho, desde que se implantó como obligacion el trabajo constante, arbitrio que cuenta ya diez años, apenas han vuelto á la penitenciaría solo *diez y ocho* de sus antiguos huéspedes.

El edificio de esta penitenciaría cuenta mas de cuarenta años, y con este motivo, para mejorar la forma de los primitivos talleres, he convenido con los actuales empresarios en que los reconstruyan de su cuenta, sin gravámen para el fisco.

En cuanto al supremo gobierno, que está convencido de la necesidad de ensancharlo para dar cabida al aumento de criminales que ha traido consigo el acrescentamiento de la República, ha hecho levantar planos y formar presupuestos para el conveniente trabajo de otras trescientas celdas sobre las quinientas veinte que hoy existen. Así tendremos en tres ó cuatro años mas seriamente transformada la prision, que entónces reunirá á las condiciones hijiénicas y de seguridad que en el dia tiene, la de poder alojar comodamente y de dar ocupacion hasta ochocientos condenados.

La manutencion de los reos es abundante y consta de frijoles, con un pan de harina candeal que pesa diez y seis onzas, diariamente; con excepcion de los domingos, en que dichas comidas sfín de carne.

Esta manutencion la da un contratista y cobra por ella á razon de doce centavos al dia por cada preso.

Segun este precio del alimento que el total de los criminales de la penitenciaría, con lo que produce con su trabajo, contribuye con mas de las dos terceras partes de su costo.

Los presidarios, tanto en sus departamentos, ó dormitorios, como en los talleres, estan vijilados constantemente por empleados que se llaman *guardianes*, los cuales estan armados de espada y furta y cuidan de que aquellos trabajen y de que observen estrictamente las reglas que el réjimen correccional les impone.

Respecto de la seguridad de la prision, ésta está confiada al cuidado de un guardia especial, compuesta de cuatro oficiales y de sesenta hombres, quienes, por turno, cubren puestos de centinelas en las murallas que sirven para este fin.

Esta guardia no tiene ninguna comunicacion con los presidarios y es formada con hombres que acreditan honradez y buenas costumbres.

La entrada de los reos en la penitenciaría se hace en esta forma:

Apénas ingresa un condenado, se le somete á un prolijo registro, para evitar que introduzca dinero ú objetos prohibidos en la prision. En seguida se le coloca en una celda, en la cual debe permanecer quince dias, recibiendo lecciones, respecto de sus deberes en la casa, del empleado que tiene esta incumbencia.

Cuando el reo cumple su condena, despues de ajustarlo de los beneficios que hubiese guardado en tesorería, y de cumplir con las demas disposiciones que sobre el particular prescribe el respectivo reglamento, se entrega con una papeleta al oficial de turno, quien, conduciéndolo hasta la puerta principal, lo despidе del establecimiento.

En el ejemplar del reglamento que le adjunto encontrará V. to lo demas

que requiere la estabilidad de la penitenciaría, y que no he creído conveniente repetir en la presente.

En dicho reglamento solo se ha hecho una modificación, la supresión de los cargos de Sub-director y de Contador Tesorero.

Además de la penitenciaría de Santiago, como prisiones destinadas al cumplimiento de largas condenas, existen la Penitenciaría de Jalca, el Presidio Urbano de Santiago, la Cárcel de Valparaíso, y la de Curicó. En todos estos establecimientos los condenados tienen algún trabajo, pero trabajo sin organización conveniente, que no reporta provecho alguno al fisco ó á las correspondientes municipalidades.

Existen también en todos los departamentos de la República cárceles de detención, es decir, casas más ó menos seguras, donde los delincuentes son encerrados mientras los Jueces conocen de sus procesos.

Le adjunto también un cuaderno que trata sobre visita de cárceles y que se publicó con motivo de la discusión que hubo en la Cámara de Senadores, á propósito del establecimiento de dicha visita.

Tengo el gusto de suscribirme de V. afmo. servidor y amigo,

R. NONTANER.

P. D.—Me olvidaba manifestar á V. que, respecto de prisiones de mujeres, solo tenemos en Chile la Corrección de Santiago.

En este establecimiento se cumple toda clase de condenas, desde por unos días hasta por tiempo indefinido.

El actual señor Ministro de Justicia se ha preocupado mucho de mejorar en cuanto sea posible esta prisión. Al afecto, aparte de las serias modificaciones que se han hecho en sus edificios, se han establecido en ella diversos talleres de labores de mano, de tejidos, etc.

De modo que, tratándose de esta cárcel, se puede decir que ya comienza á ser un centro correccional, donde las criminales, juntamente con sufrir el castigo que por sus delitos merecen, adquieren conocimientos, que no solo reformatan sus costumbres, sino que también les facilitan los medios de ganarse honradamente lo que han menester para vivir.

R. NONTANER.

CHURCH OF ENGLAND CENTRAL SOCIETY, FOR  
PROVIDING HOMES FOR WAIFS AND STRAYS,  
LONDON, October 29, 1886.

DEAR SIR: Brevity I presume you desire in all answers to your questions. I am answering them in an express train, and by return of post. A treatise might, of course, be written (and I have written much) in answer to each. My experience is derived from ten years' work in a prison to which sometimes twenty thousand men, women, and children came in a year, and from coöperation with all agencies that in any way seek to prevent or cure crime, immorality, ignorance, and uselessness.

Set your own house in order. Many American prisons are good and progressive; others take us back to the state of affairs that was only tolerated in England one hundred years ago.

With all good wishes for the success and utility of your Commission,  
I am, yours very faithfully,

J. W. HORSLEY, M. A. Oxon.,  
Late and last Chaplain of H. M. Prison, Clerkenwell.

1. In England and Wales fifty per cent of crime is directly, and an additional twenty-five per cent indirectly, attributable to intemperance, which is slightly decreasing among men, but largely increasing among women of all classes. This is a moderate estimate, below that given by many experts. The other chief causes are the absence of direct teaching on points of morals in schools, Sunday schools, and from the pulpit; betting and gambling, and the prominence given to these subjects in the daily press and the much-multiplied sporting papers; the love of luxury and finery; the absence of a cumulative or progressive system of punishment for some offenses. Poverty (all honor to the poor!) is to a very small extent a cause of crime.

2. Stricter liquor laws; teaching the Decalogue more than the genealogies of the kings of Israel or the topography of Palestine; more efforts by church and State and private philanthropy for children of certain classes; curtailing the license of the press in the matters of the publication of betting lists and details of divorce proceedings; a greater extension of the boarding-out system to children under the Poor Law; the ideas of the reformation of the offender, and of the protection of the community to be kept more in view in the management of prisons, and the application of the law, and not merely, or even chiefly, the position of the offender, and the deterrence of probable evil doers.

3. A stated Chaplain to every five hundred cells or less; an assistant Chaplain and a scripture-reader where there are more than five hundred cells; freer admission of volunteer but authorized John Howards and Elizabeth Frys; daily services, with short addresses, on religious and moral subjects; more communication allowed with friends and relatives whose influence is found to be humanizing and elevating; easy access to good prison libraries; employment of a nature to develop intelligence; reducing association to a minimum.

4. A discharged prisoners' aid society to every prison (as is now the case in England), with a committee of ladies and gentlemen, including the Governor and the Chaplain of the prison, having a paid agent, and supported by a grant from the State not exceeding the amount of voluntary subscriptions; a refuge and testing place for males and for females on discharge; an extension of the supervision system and of release of worthy first offenders on parole or bail.

5. In separate establishments, at any rate for all under eighteen years of age, special classes for their religious, moral, educational, and technical instruction, conducted under the supervision of, but not usually by, prison officials.

6. The extension of the industrial school system and the better classification of industrial schools; the curtailment of the right of evil parents to claim their children on discharge from industrial schools or reformatories; special agents in all cities to seek out and provide for uncared-for children; a capitation grant to all well regulated societies or institutions that provide for such children; the repression of mendicancy, especially where children accompany beggars or tramps.

EDGBARTON, BIRMINGHAM, October 29, 1886.

GENTLEMEN: I have received your circular as to juvenile crimes. As I have been for nearly twenty years the Chairman of a penal school, my attention has been much directed to this subject. My conclusion is, that the crime of a nation may be greatly reduced by arresting, committing, and

educating juveniles on the verge of crime. We have two kinds of penal schools, viz., reformatory, and industrial; the essential difference is, that industrial schools cannot detain their inmates after they are sixteen years old, and that reformatories keep them much longer.

It is an industrial school with which I am connected. I am glad to say that the children, little better than savages at entering, and with habits of thieving hard to correct, yet turn out well after they leave. Our returns to the Government show that during three years after leaving, four out of five (eighty per cent) lead honest and industrious lives. Without this encouragement, I should not have persevered in a rather thankless task.

All the children are committed to the school by magistrates in petty sessions. The General Government allow us 51s. a week, and the local Government 1s. 6d. a week. The land and building are our own, in fee, and free from mortgage, or other debt. We have about £100 a year private subscriptions. The 6s. 6d. a week has proved equal to all the cost of maintenance, salaries, rates, etc. We have a considerable sum accumulated, in case of an epidemic or uninsured fire.

As a total result of these institutions, the amount of juvenile crime in Great Britain has been wonderfully reduced, and the next generation will be free from a multitude of offenders who would have grown up in crime.

I am, gentlemen, yours faithfully,

W. L. SARGANT.

If you would like to know further particulars as to Acts of Parliament, and the origin of these schools, apply to Alfred Hill, Esq., Hagley Road, Birmingham.

THE HOWARD ASSOCIATION, 5 BISHOPSGATE WITHOUT, }  
LONDON, E. C., November 1, 1886.

DEAR SIR: Your letter of October twelfth is to hand. The six questions contained in it might well take volumes to furnish a reply to. Briefly however, a few general observations may be offered; and in this line, I doubt if I can do better than invite your attention to the inclosed letter, which our Association forwarded, a year or so ago, to the United States "National Conference on Charities, Prisons, etc.," in response to a request (similar to your own) received by us from Hon. Wm. P. Letchworth, of New York, through his Excellency, J. R. Lowell, the United States Ambassador in London at that time.

It contains observations which are probably as applicable now to California as to other States of your vast Union.

I may remark that I feel a special interest in the efforts in this direction of your fine city and State. For in the summer of 1860, I landed at San Francisco (after traveling in Australia) and spent a fortnight in your city, the young giant of the West, and found it deeply absorbed in the Presidential election, just before the war. I traveled across your great country by the "overland mail stage," via San José, the San Joaquin Valley, Tulare Lake, the southern mountain passes, Los Angeles, and Fort Yuma, and so across Arizona and Texas to St. Louis.

We were twenty-two days and nights on the journey. It was a most interesting route of entire novelty, and it remains deeply impressed on my memory. I was delighted with California in particular; and since my return to England from that journey around the world, have often said that while I like dear old England best of all countries, yet the next best I

should care to live in would be, on many accounts, your own splendid State.

Its grand central valley, its magnificent mountain summits and slopes, its picturesque coast ranges with their Devonshire-like park lands and fertile farms, the noble Bay of San Francisco, the mild, uniform temperature of about 64°, the views of the mountains, the waters and the islands, from all parts, up and down your steep city streets, the tall men with their broad-brimmed hats, the genial people of a more cosmopolitan type than in other States, your well supplied markets with their great variety of fruits and vegetables, flesh, fish, and fowl, your solid and large coinage, and your continuing sunshine and bright weather—all left upon me a peculiarly favorable impression. And you have so many "Sans" and "Santas" that I sometimes found myself on the point of calling the mountain in view of your city "San Diablo."

The "go" and life and energy of your city impressed me much. You had too much "go" in some things. One resident told me that in ten years he had seen all the officials in your Custom House changed four times. A great desideratum of the United States of America is more *permanence* of central government and of officialism. All public functionaries need time to learn their duties, and then to practice what they have learned by experience. Europe is not yet so *effete* but that even intelligent Young America may profitably study further some of the experiences of the old world.

Now a word as to Penology. You have gone ahead of us in various things, but *not* yet in *that*, nor any of the United States yet are ahead of the old country in *that*. Pray, allow me to urge you to keep your eyes fixed steadily in making all your arrangements on the one great practical test of FINAL RESULTS.

In any system, what is *most* wanted is to have the *least* possible of crime and evil. The *main* object of prisons, reformatories, and poorhouses is to be—*empty*.

In old England our general crime tends to decrease. Our general pauperism is fairly held in check, considering our peculiar difficulties and cramped space.

But taking the United States of America as a whole, your criminals, your rogues, your roughs (larrikins, etc.), your tramps, tend to *increase*.

They have remarkable vitality and fecundity—like the claimants of your war *pensions*.

You are too cruelly "kind" to them. It is the greatest *real* kindness to the community, and especially to the weaker ones, the women and children, to protect them from violence and robbery by making the condition of criminals *unenviable*. But hitherto, are not many, or most of your United States prisoners and paupers *enviable* as to their easy indulgences? Make your sentences short, but *sharp*, and on the *cellular* separate system. Your prisons will never tend to be empty so long as you congregate your rogues in pleasant but demoralizing associated labor. Such labor, however well it may pay for the moment, is *dear* in the end. It is penny wise and pound foolish.

The roots of crime and poverty are the main things to look at, and to look after. It is *somewhat* good to have reformatories, industrial schools, refuges, etc., all maintained out of the pockets of the honest workers of the community; but is far better, very much better, to *prevent* those burdens being placed upon other people's shoulders by the most effectual measures for diminishing their *causes*, especially *intemperance*, and by enforcing the *personal responsibility* of all citizens for themselves and for their CHILDREN.

It is better to compel lazy, drunken parents to look after their own fami-

lies than to take those families off their hands. But the main cause of crime and pauperism is *intemperance*. Therefore, aim especially at that snake, and if you cannot kill him, keep on "scotching" him. If you don't "lick" the liquor, the liquor will "lick" you. It is like the old General who said to his soldiers, briefly: "Now, then, boys, there's the enemy, and if you don't kill them, they'll kill you."

Heartily wishing you success in this good warfare, and a cordial common sense coöperation therein of all good people—Protestants, Catholics, and Jews,

I remain, dear sir, yours, with much respect,

WILLIAM TALLACK,

Secretary of the Howard Association of Great Britain.

To the Hon. ROBERT T. DEVLIN.

SUPERIOR COURT OF CALIFORNIA, IN AND FOR ALAMEDA COUNTY, }  
DEPARTMENT NO. 2, OAKLAND, CAL., September 23, 1886. }

ROBERT T. DEVLIN, Esq., *Secretary of the State Prison Commission:*

DEAR SIR: Yours of the twenty-first instant, in relation to the subject of prison management, etc., is received. I have not time to give at length my views upon the subjects referred to, but will simply answer briefly, according to my best judgment, the six questions propounded.

First, the immediate and even remote causes of crime are numerous. Two of the *principal* causes are *ignorance* and *idleness*.

To the second question my answer is *proper education* and *suitable employment*. Wendell Phillips, in his Harvard College oration, stated that book learning did not make up ten per cent of the intelligence that transacts the business of the world.

To the third question I should say kind treatment, useful, congenial employment; reading good books, the enforcement, by strict, kind, and just discipline, of cleanly and good habits. "*I owe all that I am under God to habit*," said Lord Brougham.

To the fourth question I say it is the duty of the State to punish crime and to *prevent crime*, and to aid the helpless. Business men and farmers do not like to employ ex-convicts. They cannot be expected to do so. They must have employment or suffer. The State should furnish a means for the employment of such as really need it. They are human. The proceeds of prison labor might be utilized to establish an industrial home for needy ex-convicts, that, if properly managed, would be self-supporting.

My answer to the fifth and sixth questions is the same. The State can and ought to establish an institution such as contemplated and provided for in the bill introduced in the Senate of this State by Senator Hartson of Napa, about six years ago. It passed both Houses, but failed to become a law because the Governor did not sign it. An almost exact copy of the same bill was, at my request, introduced in the Assembly at the last regular session of the Legislature of this State, by Hon. Frank Moffitt of Oakland. A copy of this bill is to be found in the State Library.

The subject is one of vast and serious importance. It pertains to the progress of civilization, the welfare of the State and of society. Crime is like an eating cancer upon the body politic; it must be kept under control, or ultimately it will destroy the State. There are some, even many, nat-

ural criminals—persons predisposed naturally to crime, persons possibly that cannot be reformed, whose blood is so corrupt that it cannot by any process short of a miracle be purified in one ordinary lifetime. There is some truth, I think, in the old saying that it takes three generations to make a gentleman. All criminals that cannot be reformed ought to be placed in a condition that would make it impossible for them to reproduce their kind. I am sorry that I have not time to give more thought to the subject, and to write more carefully and fully my views; but my engagements will not permit.

I have the honor to be, very respectfully, yours,

E. M. GIBSON.

STATE OF CALIFORNIA, SUPERIOR COURT, DEPARTMENT No. 3, }  
CITY AND COUNTY OF SAN FRANCISCO, September 28, 1886. }

Hon. ROBERT T. DEVLIN, *Secretary State Penological Commission:*

DEAR SIR: In answer to your inquiries of the twenty-first instant, I would say that my experience on the bench has been confined to civil business, and that I have not had sufficient opportunity to investigate the causes of crime and the means of its prevention, to express any opinion that would be valuable to your Commission.

I realize the importance of the subject you are investigating, and can only regret my inability to aid you by some suggestions founded on my own observation.

Very respectfully yours,

JNO. F. FINN.

CHAMBERS OF A. J. BUCKLES, JUDGE OF THE SUPERIOR COURT, }  
SOLANO COUNTY, FAIRFIELD, CAL., September 22, 1886. }

Hon. ROBT. T. DEVLIN, *Secretary Penological Commission, Fourth and J Streets, Sacramento:*

DEAR SIR: In answer to your favor of twenty-first instant, I beg to reply that, as you desire a prompt answer, I shall be unable to give my views very intelligently. In answer to your first question:

1. "What do you consider the principal causes of crime?" I will say, generally, *intemperance*, and the uncertainty of punishment.

2. "What means are most effectual for abating or removing their causes?" I answer, educate the masses against the use of intoxicants, follow that by prohibiting the manufacture and sale; and as to the latter cause, I have no plan matured by which punishment for crime can be made more certain; but certain it is, that if criminals felt that punishment would certainly and swiftly follow their misdeeds, they would not commit crime with the same impunity some of them do now.

3. "What agencies do you consider as most effective in reforming convicts while in prison?" Teach them a common, useful trade, at which they can readily find employment when discharged from prison, and while in prison I would keep them entirely isolated from the current events passing on the outside. Allow them absolutely no intercourse with the outside world. They should read no newspapers, but should have as much history, scientific, and religious reading as they might wish for; should hold no communication whatever with friends or relatives; relatives could learn of the prisoner's health and condition from the authorities of the prison.



4. "What aid should be given to discharged prisoners to prevent them falling again into crime, and to assist them to obtain employment?" This, to me, is a vexed question. But it seems to me that were prisoners given a thorough education in some useful branch of industry, a directory might be kept at the prison, and the manufacturers throughout the country invited to register therein the number of men they might need from time to time in their establishments, and then as men are discharged they could be sent direct to these manufacturers, where they would at once be employed. By this means it occurs to me that if a prisoner really wished to give up his criminal practices, he could start right in the moment he left prison, and earn his own living in an honorable way.

5. "How should juvenile prisoners be cared for?" Confined separately from adults, treated with rigid discipline, but the utmost kindness, educated physically, morally, and intellectually, and allowed no communication whatever with the outside world. They should, also, if the time of incarceration be long enough, be taught some useful trade.

6. "What can the State do toward saving the uncared-for children from a criminal life?" An institution should be established and these children gathered in and cared for as the State's wards, where they might be educated and given homes.

Respectfully, etc.,

A. J. BUCKLES, Judge.

COLUSA, CAL., September 24, 1886.

ROBERT T. DEVLIN, Esq.:

DEAR SIR: Yours of the twenty-first instant, asking my views in regard to the improvement of prison management, etc., received. The following answer to the several questions propounded by you give my views, so far as I have any, upon the subject.

To question No. 1. Excessive use of intoxicating drinks, and idleness.

To question No. 2. I am unable to give any satisfactory answer.

To question No. 3. Constant employment, together with kind treatment.

To question No. 4. I have no sufficient knowledge.

To question No. 5. In an institution entirely separate from the State Prison; constant employment furnished; should have proper moral training.

To question No. 6. Provide or aid in providing an institution for their care and education, and where proper means shall be used for procuring permanent homes for them.

The above are briefly my views of the matter under consideration.

Yours, respectfully,

E. A. BRIDGFORD.

CHAMBERS OF THE SUPERIOR JUDGE, SAN BENITO COUNTY, }  
HOLLISTER, CALIFORNIA, September 25, 1886. }

ROBERT T. DEVLIN, Secretary California State Penological Commission,  
Sacramento City:

DEAR SIR: Your communication of the twenty-first instant came duly to hand. In reply I beg to say that I doubt my ability to give intelligent and instructive answers to your several questions. As far as my official observation has gone, my conclusion would be that the causes of crime are various, and if I were called upon for a specific answer, I could only say: "moral depravity." The best answers I can give are as follows:

1. Moral depravity.
2. Education, and the prevention of evil associations in early years.
3. I have had no knowledge or experience in that regard and can give no opinion.
4. The State should aid discharged convicts until they are beyond the necessity of committing crime.
5. Juvenile criminals should never be sent to a penitentiary, but rather to a State reformatory institution.
6. By founding and endowing an institution where all abandoned children will be cared for and taught useful trades, as the wards of the State.

Respectfully,

JAMES F. BREEN.

OFFICE OF THE CONNECTICUT PRISON ASSOCIATION, }  
ROOM 45, STATE HOUSE, HARTFORD, CONN., July 27, 1886. }

ROBERT T. DEVLIN, Esq., Sacramento, Cal.:

DEAR SIR: Replying to yours of June twenty-third, and answering your questions in their order—

1. Drinking, gambling, laziness, and innate "cussedness."

2. Systematic labor (production), if not voluntary, to be made compulsory.

3. Labor. Library and schooling; good air and wholesome well cooked food; good discipline, and the hope and possibility of advancement or betterment of condition according to merit. A practical, hard working, good, but not too pious Chaplain and teacher. Judicious visitation; but not to bring dainties into the prison.

4. First, a thorough understanding of the prisoner before discharge; meet him when released. If he is at all disposed to a correct life, give him material assistance (rarely money), and stand by him till he is well on his feet and able to "paddle his own canoe."

5-6. Have no experience with juvenile criminals, but on general principles believe that is the place to put in lots of good work. Prevention is easier and better than cure.

Yours, very truly,

JOHN C. TAYLOR, Secretary.

STATE OF MICHIGAN, BOARD OF CORRECTIONS AND CHARITIES, }  
LANSING, August 18, 1886. }

ROBERT T. DEVLIN, Secretary, Sacramento, Cal.:

DEAR SIR: Your communication of June twenty-fifth was duly received, but owing to my absence from the office almost continually since its receipt, it has been before unanswered.

I send you by this mail some pamphlets which answer the questions propounded very fully I think. To the first two questions I send a leaflet entitled "Crime Schools at Public Expense." To the third and fourth, a copy of the "Proceedings of Conference of County Agents," etc., and have marked in the index one or two items bearing on such questions; you may find others in the pamphlet equally serviceable. To the fifth I send you the biennial reports of our two reform schools, and to the sixth the report of our State Public School. I also send compilation of such laws of Michigan as bear on the work of this State Board, which will inform

you how matters committed to your Commission are provided for in Michigan. Hoping that what little information of value these may contain shall not reach you too late to be of service, I am,

Yours, respectfully,

L. C. STORRS, Secretary.

MARYLAND PRISONERS' AID ASSOCIATION, }  
BALTIMORE, July 13, 1886.

ROBERT T. DEVLIN, *Esq.*:

DEAR SIR: In reply to the questions in your circular letter asking me to give my views in relation to measures for the improvement of prison management, care of juvenile criminals, aid to discharged prisoners, the more effective prevention of crime, etc., I would answer:

1. As to causes of crime, we consider the principal causes: First, liquor; second, idleness; third, want of education; fourth, neglect of religious duties.

2. Abating or removing causes: First, employment; second, prohibition; third, education; fourth, speedy and just trials; fifth, securing good legislation and enforcing it; such as having a good magistrate system, and laws preventing female sitters in concert saloons and variety theaters; prohibiting the publication and sale of immoral and indecent literature; enforcing a quiet Sabbath.

3. Agencies most effective in reforming convicts whilst in prison: First, humane treatment; second, supplying work and teaching a trade; third, instruction in reading and writing; fourth, distributing good literature; fifth, religious services.

4. Aid to discharged convicts. Have a Prisoners' Aid Association with one or more efficient agents to—first, meet all discharged prisoners and keep an oversight over them; second, to aid them in securing employment; third, to furnish necessary clothing and tools to the worthy; fourth, to send them home or where they have a prospect of securing work; fifth, to visit or correspond with discharged prisoners.

5. Care of juvenile criminals. Should be placed in a reformatory or house of refuge and not in a penitentiary or county jail.

6. Uncared-for children. See manual of the Baltimore Society for the Protection of Children, which I send you.

Very truly yours,

G. S. GRIFFITH.

25 RELSIZE AVENUE, N. W., ENGLAND, November 7, 1886.

*Commissioner for Improvement of Prison Management:*

DEAR SIR: I regret exceedingly that absence on the continent, and a great pressure of occupation since I returned home, have prevented my earlier acknowledgment of your letter of August seventh last, containing the request with which the Commission has honored me for information on the subjects into which it has been charged to inquire.

I believe I shall best answer the questions you transmit by forwarding to you a memoir of my late father, Mathew Davenport Hill, in which the authors (my sister and myself) detailed the opinions at which he arrived upon the subject of the prevention of crime and the improvement of prison discipline during a long life of observation and experience.

It is, however, some years since the book was published, and although I believe my father's recommendations are as applicable to-day as when

he put them forth, subsequent experience to his suggests additional means whereby crime may be prevented.

Certainly that which most approves itself to reason is to cut off the supply of juvenile criminals; and in this country we are coming more and more to believe that this may best be done by placing them in the position appointed by nature for their up-bringing, namely, genuine family life—but family life of which the conditions are good.

We seek to accomplish this by boarding out the neglected and destitute children in approved foster homes, and using so called "institutions," *i. e.*, schools of various kinds where children must be associated in large numbers as little as possible.

I must admit that we are only *beginning* in this country to deal thus with children who are criminals, or on the highroad to crime. Our Australian colonies are before the mother-country in this respect. They are one after another adopting boarding out largely for this class of children, as for some years they had done for the destitute.

But both in our colonies and at home we are copying—and gratefully acknowledge that we are copying—the method which has for several years been pursued in one portion of the United States, and perhaps in others. I refer to the "Massachusetts plan," of which information has been most kindly supplied by the authorities charged with the care of criminal children in that State.

The labors of your distinguished countryman, the Rev. Charles L. Brace of New York, in planting out the "perishing and dangerous classes" of children from that city, are also regarded in this country as affording a model for the prevention of child-crimes.

In regard to adult criminals, we pursue here the system organized and administered in the Irish convict prisons thirty years ago by Sir Walter Crofton, of which details are given in my father's memoir. When administered in its integrity, this system, founded on the teachings and practice of Montesinos, Obermaier, and Maconochie, both reforms the offender and prepares him to take his place among honest workers when he returns to the world.

We have not yet adopted the principle of retaining the offender until he is reformed, instead of until he shall have fulfilled a fixed period of imprisonment. This formed a portion of Captain Maconochie's scheme of criminal discipline, but the only prison in which, so far as I know, it is acted upon, is the prison of Elmira, in New York State. A description of that prison will be found in the valuable book completed just before his death, by your distinguished countryman, Dr. E. C. Wines, entitled "State of Prisons and of Child-Saving Institutions," Cambridge, U. S.; Wilson & Son, 1880.

I am adding to the accompanying book-parcel, a few tracts recently published bearing upon the subjects of this letter.

Believe me, dear sir, faithfully yours,

FLORENCE DAVENPORT HILL.

#### CAUSES OF CRIME AND ITS PREVENTION—ANSWERS TO QUESTIONS.

1. In this country the poverty arising from ignorance and drunkenness, especially the latter, is a principal cause of crime. Dislike of hard work is another; gambling and rash speculation, which may be called gambling, is probably one of the chief causes of crime among the classes above the lowest.

2. (a.) The extension and improvement of elementary education (to which the marked decrease in crime, of late years, in this country is probably in considerable measure due). (b.) Diminution in the use of alcoholic drinks. (c.) A wise system of criminal discipline which shall prepare the offender to avoid crime on his return to ordinary life. (d.) Aid at the expiry of sentence in obtaining the means of an honest livelihood. (e.) Perpetual detention of the unreformed.

3. Those employed by Sir Walter Crofton when at the head of the Irish convict prisons. (See memoirs of M. D. Hill.)

4. (a.) Police supervision exercised in a kindly spirit. (b.) Individual efforts shown in meeting prisoners at the gaol door, and saving them from former vicious associates, and in subsequent "shepherding," to use an Australian phrase. (c.) Discharged Prisoners' Aid Societies, numerous enough to insure help to every discharged prisoner if needed.

In this country the gratuities earned by prisoners by good conduct are frequently passed over to the Discharged Prisoners' Aid Societies, and expended by them for the prisoners' benefit, otherwise they may be a curse instead of a boon, as tempting the owner on returning to the world to expend them in dissipation. Experience shows that it is not desirable to establish a home in which a large number of discharged prisoners can be received at once; it is better to find decent lodgings for them individually, so as to merge them in the population.

5. As much as possible by boarding out under thorough supervision, on the "Massachusetts plan." [This plan is described in Dr. E. C. Wines' "Child-Saving Institutions," etc., p. 135.]

For those requiring stricter discipline there should be: (a.) industrial schools; (b.) reformatory schools; (c.) penal schools. The latter are needed to relieve reformatory schools of those needing sterner treatment than accords with the scope of the reformatory, so as to avoid sending lads, however vicious, to prison.

All these schools should be on the Mettray plan, known as the "family system;" i. e., where the children are divided into small groups and lodged in separate houses, with as many of the conditions of family life as circumstances permit.

6. Boarding out the parentless or destitute children under the supervision of voluntary committees, as in Great Britain, Ireland, and the Australian Colonies, or placing them in families on the plan of the Rev. Charles L. Brace, of New York.

F. DAVENPORT HILL.

OFFICE OF CHIEF OF POLICE, }  
SACRAMENTO, CAL., October 11, 1886. }

ROBERT T. DEVLIN, Esq., Sacramento City, Cal.:

DEAR SIR: Your circular letter fifth instant received, and in reply hand you the following:

1. Intemperance.
2. A national local option law.
3. For the first offense a light sentence, with close confinement, and for second offense imprisonment for life at hard labor and pardoning power abolished.
4. Give each prisoner discharged a fairly good suit of clothes, with a change of underclothes, and fifty dollars in coin.
5. Under fifteen years of age in a State Reform School, having the advantage of giving them a good education, which will be compulsory;

over fifteen and under twenty years of age to a similar institution, and compel them to learn a trade of their own choosing.

6. The State to establish an institution giving board and lodging, clothing, and education, to a limited or fixed age. The State to appoint a physician for these institutions, whose duty it shall be to look after the health of the inmates and sanitary condition of the buildings, etc.

Yours, respectfully,

H. F. DILLMAN, Chief of Police.

STATE OF NEW YORK, OFFICE OF THE COMMISSIONER OF THE }  
STATE BOARD OF CHARITIES, EIGHTH JUDICIAL DISTRICT. }  
GLEN IRIS, PORTAGEVILLE P. O., October 2, 1886. }

Hon. ROBERT T. DEVLIN, Secretary California State Penological Commission:

DEAR SIR: Supplementing my letter of July second, and replying to query five in your circular note of June twenty-third, I send herewith a paper read before the last National Conference of Charities and Correction, in which (pages 27-53) I treat of the subject of juvenile delinquency, and to which I respectfully ask your attention.

Very truly yours,

WM. P. LETCHWORTH.

OFFICE CHIEF OF POLICE, }  
SAN FRANCISCO, October 8, 1886. }

California State Penological Commission:

GENTLEMEN: In reply to your printed circular, hereto annexed, I will say:

1. Intoxication, poverty, ignorance, lust.
2. Education, industry, and self-control.
3. Kind treatment, and a plan by which to gain access to the better feelings of humanity.
4. Pay their passage to some far-off place, where they are unknown; provide that they receive a reasonable sum of money upon their arrival there, for the purpose of paying their board and lodging for a reasonable length of time. Should they have relatives at a distant place, and as a choice they should select that place, send them there; otherwise, I would send them only where they are unknown. Under those circumstances, if there be any good in them, they will show it. I believe there is some good in the worst criminals, but the difficulty exists in developing it.
5. By reformatory institutions under care of the State.
6. The State can subsidize existing benevolent and reformatory institutions, or, better still, manage the matter by her own agents. Place females, their age to be not less than thirty-five years, in charge of such institutions. I believe the influence of kind females to be the most effectual.

All of which is respectfully submitted.

P. CROWLEY,  
Chief of Police, San Francisco.

WARDEN'S OFFICE, CALIFORNIA STATE PRISON, }  
SAN QUENTIN, CAL., December 4, 1886.

Hon. ROBERT T. DEVLIN, *Secretary Penological Commission, Sacramento, Cal.* :

DEAR SIR: Your favor of November twenty-seventh is at hand. The six questions propounded by you involve the whole subject of Penology, as it is popularly understood, and about which volumes might be written without exhausting the subject. I will endeavor to answer briefly as possible:

1. "What do you consider the principal causes of crime?"

Undoubtedly, parental neglect of children is one of the main causes. In all of our large cities, and in fact many of the towns of the State, boys, and even girls, are allowed to run riot, without any restraint from parent or guardian. They form the acquaintance and seek the companionship of the lewd and vicious before any fixed principles of right have taken root; and attracted by the idle and dissolute company in which they are thrown, they easily fall a prey to dissipation of all kinds. Drunkenness, the opium habit, and cigarette smoking, soon blunt whatever ideas of morality they may have, and a life of crime and shame is the only road left for them to travel.

The increase of railroad facilities has tended to bring into our State a large number of runaway boys from the older States. Armed with a box of blacking and a shoe-brush, they beat their way on the trains from the East, riding sometimes hundreds of miles on a brake-beam, until they are put off by a conductor, only to board the succeeding train. It is no uncommon sight to any one who has traveled over our State to see a half dozen of these boys in a gang, along the line of the Central and Southern Pacific roads, ranging from eight to fifteen years old. They are to be found in all the railroad towns, and numbers of them are to be seen in San Francisco and Oakland, with no means of earning a living, save an occasional nickel for blacking boots. With no one to advise or care for them, they are driven into crime by very necessity. This, in a measure, accounts for the large number of youthful criminals in our State Prison and county jails. It is a safe estimate that seventy-five per cent of the criminal element proper has been directly brought into a life of crime by the utter neglect of proper care and training in their youth. It is from twelve to sixteen years of age that the boy is made or ruined for life; neither is it altogether the fault of parents. Amongst the poorer laboring classes of the large cities, the man of family, who works by the day for small wages to help support his family, has but little time for the proper care of his children.

The mother, who does her own housework and perhaps assists by needlework or otherwise in the support of the family, cannot know while she is so engaged, what her children are doing. They are turned into the streets in the daytime, and often at night, without let or hindrance as to where they go or what they do. They soon become familiar with all that is bad and vicious. Reared thus in squalor, and familiar from childhood with the most depraved of our race, is it any wonder that they should grow naturally into criminal habits? Nor is this confined entirely to the poorer classes; several instances have occurred in this State where our best and wealthiest families have been brought to grief by the misconduct of a child that has either been neglected or humored too much by them.

In the foregoing I do not refer to the accidental criminals, that is, those who become convicts through some one act of indirection, and are not otherwise criminals, but more properly to the vicious element that have no

thought of other occupation save the gratification of their immediate wants, regardless of property or personal rights. Going from the primary to the secondary cause of crime, or more properly speaking, from the crude material (the boy first released from parental control), to the hardened criminal, we pass through the various stages of his criminal education. He first cultivates cigarette smoking; that is the first step in his downward course; next comes learning to take alcoholic stimulants; next the opium habit; the latter is the most ruinous of all. The use of these articles soon becomes a necessity, little by little the moral sensibilities become blunted, while mentally and physically the system becomes feverish, excited, and restless. Having no means to procure the necessary stimulants, theft is resorted to, first to gratify the appetite, and perhaps of a petty nature; becoming more reckless with success, detection and conviction are sure to follow.

There are many other causes of crime in this State that do not exist to so large an extent elsewhere. The free-and-easy habits our population acquired during the mining excitement of early days, although not felt directly at the time, have left their impress upon the succeeding generation. The disposition to live beyond their means is a prolific source of crime, particularly amongst young clerks and others occupying fiduciary positions. The "dives" of the large cities, where lewd women and viler men associate in semi-publicity, have a most demoralizing effect upon the rising generation; and they are *licensed by law*. Stock gambling has brought many men to crime, and will doubtless cause many more to follow in their footsteps. But it is useless to follow this branch of the subject farther, as enough has been suggested to cause serious reflection, and that naturally brings us to the consideration of—

Question No. 2. "What means are most effectual for abating or removing these causes?"

To properly answer this question is at once to solve the whole problem of penological science. However, some of the last mentioned causes of crime can be reached by law. I would make stringent regulations in regard to issuing license to underground cellars and the lower order of dives in the larger cities; absolutely prohibit those *free* exhibitions such as dance cellars, where liquor and beer are sold by women; at a specified hour, say twelve o'clock, close up *all* places where liquors are sold, and particularly those places where criminals most congregate and are well known to the police. The criminal element is rarely on the streets until after twelve o'clock at night. Make the selling of liquor to minors, or the allowing of minors in a place where liquor is sold, punishable by the severest penalties. A similar law is now on the statute books, but it is a dead letter for lack of enforcement.

Forbid by law the employment of minors in any occupation that has a demoralizing tendency, *i. e.*, telegraph and messenger boys that go and come to houses of ill fame, gambling rooms, etc.

Making the traffic in opium a felony either to buy it or sell it, except for medicinal purposes, and that only upon the prescription of a reputable physician.

Amend the criminal practice Act so as to insure the more speedy trial of persons held for trial. It is not so much the severity as the certainty of punishment that has a deterrent effect. It is a well understood fact that the criminal who is backed by money or strong influence, has little fear of conviction. Repeated postponements, for technical reasons, soon abate whatever of interest the public may have had in the matter at the time of

the commission of the offense. This is best illustrated by the case of Fong Ah Sing, recently executed in San Francisco. Repeated postponements, new trials, and delays of various sorts, kept this Chinaman in jail for over five years from the time of his arrest to the final execution of the law.

• If these things are done, much good may be accomplished; but the more serious question is yet to be answered, and in this connection I will take up Question No. 6: "What can the State do towards saving the uncared-for children from a criminal life?"

In many of the older countries of Europe the Government in a large measure assumes control of the child at about seven years of age. The parent is compelled by law to send the child to school for a certain number of months in each year; they are also compelled to serve a certain number of years in the army or navy; none are exempt—rich and poor fare alike; then the child reaches maturity before an opportunity is given to learn idle or dissolute habits. The apprentice law of Germany in particular is a most stringent one, and when a child is bound out there to learn a trade, there is no escape; a skilled mechanic is the result.

But, in free America a strong prejudice exists against the theory of allowing the Government to take the control of the child from out of the hands of its parents. Compulsory education has met with decided and successful opposition wherever it has been attempted in this country. We have no army or navy to take up our surplus population, or to even afford an avenue of employment for our youth. Hence the necessity of the State holding out some inducement to accomplish what the theory of our Government will not permit to be done by harsh measures. As idleness begets mischief, could not the State devise means for employing many of the uncared-for boys, by giving some assistance during their apprenticeship at the various mechanical trades or upon the farm, conditioned, always, upon their good behavior? In many of the older States a few years back, nearly every family "bound out" one or more of their boys as an apprentice. Could not our State lend some aid in that direction; say give each apprentice who had faithfully served for a given period one year's schooling at our State University, or elsewhere, without cost to the parent or child, either for board or tuition? Would not that be sufficient inducement to stimulate parents to make the effort to save their children? Four years an apprentice at some mechanical pursuit or on the farm, and one year at a good school, would occupy that period of a boy's life—say from fourteen to nineteen years of age—when he would be most susceptible to evil influences, and lay the foundation for a useful, honorable, and industrious citizen. Those children who have no parents, the State should take hold of peremptorily and deal with them in like manner.

Take ten per cent of the cost to the State and the various counties for detection, detention, conviction, and punishment of the criminal element, and apply it intelligently upon the foregoing theory or a similar one, and my judgment is that the State will have made the most profitable investment that it has ever engaged in.

Question No. 3. "What agencies do you consider most effectual in reforming convicts while they are in prison?"

A firm, decided, yet kindly management, a separation of the more hardened criminals from the younger and less experienced, and constant employment for all, at some labor where the convict can see the result of his efforts. It is not the mere bodily exercise of labor that produces the beneficial effect, although that is required to preserve good health; but it is the interest you can awaken in the breast of the convict in the result of his labors. When the convict

feels that he is engaged in "dead work," or work that is neither profitable or beneficial to the State, it awakens within him a strong feeling of rebellion. I would use only single cells in a State Prison, as the congregation of prisoners into large rooms has a most pernicious effect. Let each convict be the architect of his own future so far as his prison life is concerned. Aid, by good counsel and the granting of extra privileges, those who are disposed to comply cheerfully with the prison discipline, and rigidly enforce the most stringent rules against the rebellious. In connection with this subject, a large and well assorted library is of great benefit, and the Legislature should lend some assistance in this direction. The daily press should be excluded from circulation amongst convicts. The honorable Board of Directors has done much in the last year in the way of limiting the visiting of prisoners, with beneficial results; much more could be done in this direction. No one should be allowed to visit a convict except members of his family, or an attorney employed in his case. Indiscriminate visiting is certainly destructive of all attempts at reformation, as well as the enforcement of proper discipline. A State Prison should not be a pleasure resort, or a picnic ground.

A larger discretion should be given the Board of Directors in the matter of aid to discharged convicts. It is impossible to make a general law that will meet every case, as nearly each one presents a different aspect. It is of little use to give aid to the habitual criminal. It is only furnishing him additional means to pursue his warfare against organized society, but the truly repentant convict, or those who have been exceptionally well behaved, or of more than usual benefit to the State, the Board should have the authority to deal with each case in accordance with its particular merit.

Lastly, question No. 5. "How should juvenile criminals be cared for?"

I should say, in a separate institution, under the control of the State Prison Directors, and in charge of competent teachers. They should be taught useful branches of industry, as well as given an education in all the rudiments, or in other words, given a common school education. None should be admitted to this institution except first offenders and boys under eighteen years of age, and their sentences should be indeterminate, but in no case to last beyond the age of twenty-one years. When a boy reaches that age and is still incorrigible, he should be sent to a severer place of punishment. In conclusion, if the Legislature should provide for a "Boys' Reformatory," that would give us three State Prisons. Would it not be better to designate one of the three as a Central Prison, where all convicts should be first delivered under sentence and from there distributed? Could not the Board of Directors, or the prison officials under their direction, separate, and classify them much better than if left to the chance of the Courts, *i. e.*, send the boys to the reformatory, retain at the Central Prison only those convicted the first time, and those who could most probably be reformed, and send to the third prison the incorrigibles and those in whom the chances of reformation would be slight?

That would give us the benefit of three grades, and it would not be difficult to "make the punishment fit the crime." I beg pardon for trespassing to such length upon your time, but it was really hard to say less and say anything at all.

Very respectfully,

PAUL SHIRLEY, Warden.

CENTRAL PRISON, WARDEN'S OFFICE, }  
TORONTO, December 6, 1886. }

ROBERT T. DEVLIN, *Esq.*, *Sacramento, Cal.*:

DEAR SIR: Your circular letter of the twenty-fourth June reached me in due time, and I intended to write you and answer the questions submitted, but the past has been a very busy summer with me, in consequence of the activity in the several industries carried on in the prison, and the restoration of the main building which was destroyed by fire on the twenty-eighth March. These so fully occupied my time that I was unable to give the several subjects that attention necessary to let me write as I desired, and I put it off from time to time, until six months has now passed.

In this city there is an industrial school for boys in course of erection, and it is expected to be in operation soon. There is also a society for assisting discharged prisoners, under excellent management, and doing its work effectually, besides many charitable institutions, to meet every phase of sickness, distress, and crime. The National Prison Association of the United States will hold its next congress here about the middle of September next, and since all the subjects you refer to in your letter will be discussed, I would strongly recommend that your Board send delegates to attend, when they will not only hear the opinions of many, but see the working of the associations and the institutions.

Yours, truly,

JAMES MASSIE, Warden.

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## REPORT

OF

W. C. HENDRICKS

TO THE

## PENOLOGICAL COMMISSION

OF

CALIFORNIA.



SACRAMENTO:

STATE OFFICE : : : P. L. SHOAFF, SUPT. STATE PRINTING.  
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## REPORT.

DECEMBER 10, 1886.

*To GEORGE STONEMAN, Governor of California:*

By permission of the Penological Commission, I have the honor of making to you direct, the following report (heretofore made to it), as a supplemental or minority report of said commission:

FEBRUARY 1, 1886.

*To the Penological Commission:*

GENTLEMEN: By your authority, in November and December of last year, and January of this, I visited more or less of the prominent prisons and reformatories in Massachusetts, Connecticut, New York, Pennsylvania, Ohio, Indiana, Illinois, Michigan, and the military prison in Kansas.

Realizing that public sentiment must precede legislation, and that we required changes in our penal laws, and knowing that the public was slow to read reports, and how reluctant the general public at best was to think and inform itself on a subject surrounded by such unpleasant associations as the prison subject, I was much exercised about how best to programme my trip, and frame my report, so as to produce the best practical results.

After thought and consultation, I determined to deal with general principles rather than with practical details, and, as a rule, to visit noted rather than great numbers of prisons; and, also, to formulate questions covering, as it occurred to me, the bedrock of the subject, and to submit such questions to persons informed and distinguished on the subject, for their written answers; thus gaining and presenting information in the most condensed and practical manner.

Although young, comparatively, in experience, I had, from a purely practical standpoint, formed opinions which were well along to crystallized convictions. Still, knowing that I was not up in the literature of penology, I had a vague fear that my convictions might be obsolete truisms, or tested and exploded theories, and, therefore, approached with hesitancy and trepidation, the noted prison authorities of the East—those who had devoted much time and thought to the investigation of the subject. Results, however, are satisfactory; my questions have generally been answered without unfavorable criticism.

To those whose names follow in answer to my questions, I wish here to return my grateful thanks for the same, also for personal courtesies extended me. Besides those who did answer, I wish to mention the names of Professor Francis Wayland, Dean of law school at Yale; Eugene Smith, of the New York Prison Association; ex-Governor Porter, of Indiana; and many others, who, while they did

not, for some cause, answer, yet gave me, in conversation, the benefit of their thought and experience on the subject.

I also had the almost sacred privilege of listening, from his own lips, to the views of ex-Governor Seymour, of New York. He had made the prison subject rather a specialty for a great many years, and was simply eloquent in plainly expressing his opinions. His views had great weight in fixing and determining my own. His death, shortly after my visit to Utica, doubtless prevented the answers which he voluntarily promised to give, and occasions a loss deeply to be regretted.

Two sets of questions were formulated; one set of a general character, and the other intended more especially for practical prison officers.

Before proceeding to give the answers obtained to the above mentioned inquiries, I will briefly express some of my own convictions.

The entire subject of crime and its treatment seems to be naturally divisible in its consideration, under three general heads:

*First*—Preventive—saving from criminal life.

*Second*—Incarceration—during confinement.

*Third*—After stage—caring for ex-convicts.

We are devoting ourselves exclusively to the incarceration branch, entirely neglecting others of perhaps greater importance.

#### PREVENTION.

If prevention is better than cure, and an ounce of the former worth more than a pound of the latter, then we are wrong in our practice, even though our system cured the morally sick. Is it right in the State to look quietly on while the circumstances of birth and environments are drawing young victims into the vortex of crime and then punish them for being there?

In connection with this branch of the subject, and on general principles, I refer here (Appendix A) to an article on boys written by J. D. Scouller, Superintendent State Reform School, Pontiac, Illinois.

Public sentiment invariably says "No!" where it has the opportunity and the occasion of expression; witness the spread and growth of child-saving institutions.

No reform movement was ever received with more public favor, or spread with more rapidity through the world than "child saving" in its now varied forms. Commencing in 1781 with the Sunday school, intended originally for the vagrant and the vicious, it grew and spread until now no church is without its improved Sunday school, and no city of any prominence in the civilized world is without its "child saving" offshoot of the original Sunday school. These schools, or homes, or aids, are generally private; and the objection might be urged that they are dependent for pecuniary success on precarious private charity. The natural home is nature's cradle; the provided home is next best. All child homes purpose only to care for the child until it is provided a family home, in place of its lacking or unsuitable natural one. What shall be done with the child between leaving the natural and entering the provided home? It must either be cared for in a home kept up by private charity, or one supported by the State. All States have their dependent children, either uncared for or found in county poorhouses or elsewhere. Of all institutions for the care of dependent children, that of the Michigan State School is

the most desirable, in my judgment, to model after. Here all the dependent children of the State are cared for. They are kept but about eleven months on the average, costing only \$140 per annum per capita, and in the aggregate only about \$35,000 per annum. Two ideas are prominently carried out here—one avoiding the tainting of character, and the other cultivating self-reliance in the children.

Next in order, and led up to from the child period, is the school-day age, in which youths of both sexes are, or should be, prepared for filling some well defined position in the future. This common school period averages about twelve of the most important years of life, in which the foundations for all time are laid, and the future destiny, whether for weal or woe, is largely determined.

On this school-day plane, the industrial educator and the penologist are meeting from different directions on common ground; the former advocating technology in schools as a correct principle of education, and the latter advocating the same as a preventive to crime. The former notices youths graduating from school, with heads full of books, and pockets full of diplomas, without practical ability for worldly success, and who with all their cultivation are powerless to compete with others, who, perhaps, less cultured and refined, are homemade and practical; being educated, perhaps, self-educated in the world, for the world. The prison thinker, impressed with the numbers he finds in prison who lack the knowledge of how to do anything of an industrial nature, has his attention turned to the common schools, and what might be done to render them peculiarly crime preventive institutions.

The first step in any reform is to see and make clear present evils and wrongs.

The industrial educator, and the prison reformer, see alike the lack, whether or not they can point the remedy.

The word "education" is commonly used in too narrow a sense; broadly it means the cultivation of all the faculties, both physical and mental. Webster, in one of his definitions, says "to prepare for any calling or business, or for activity and usefulness in life."

Some one has well said that "to educate simply to make money, is not sufficient for exalted manhood; but how to earn a livelihood, is the solemn question at every honest man's heart."

True education might be defined as knowing how to support yourself, and those dependent on you; it means, learning how to be honest and happy, and how to help others to be so; to learn how to obey the law, be a good citizen and keep out of prison.

There is no doubt but that our system tends to build up false ideas of life, produces discontent "with the day of small things," and leads to crime. It creates a false ambition, and rather induces youths to try to live by their wits, and eat bread by the sweat of faces other than their own; while true education broadens and deepens, leads to prosperity, contentment, and happiness, and is the great preventive to criminal life. A person may be learned in books, and not be educated, others may be thoroughly educated in some branches, and know nothing of books.

A farmer, educated through observation and experience, may whistle, sing, and be happy over good crops, and be entirely ignorant of the chemistry of soils and fertilizers. He sees results. The "ignorant" miner is equally happy over the results of his blast. Educated as was the farmer, he mentally calculates the center of gravity of a

bowlder and its resistance, and the amount of explosive to overcome it; the bowlder is shattered to pieces, without his necessarily knowing anything about printed mathematical calculations. Will not the farmer and the miner probably be morally better, more useful citizens, and less likely to become a charge to the State, than the chemist and the mathematician, pale and haggard, perhaps, over their studies; full of theory and books, and restless discontent, are useless to themselves and others.

Intellectual culture must not be underrated; but that alone, without some definite object, a trade or a profession, is at least without good results. I would rather in this utilitarian age have the ignorant practical, who can make something, do something, than the wise in books without that ability. The two together, however, are much better than either single.

The most unsatisfactory object in life is a mind stuffed full to overflowing with the appropriated literary wisdom of others, without the power to impart or use; and is not our common school practice encouraging this wrong and leading to this result?

Industry is an imperative law of nature, from both a mental and a physical standpoint, and must not be forgotten in an education. The head and the hand, the mind and the muscle, should all be educated, and at the same time as a relief and to strengthen each other; so that when the common school-day course is ended, youths see a business and a prospect ahead to work up to; and the one who proposes to follow peculiarly mental pursuits is in the line and strengthened physically to follow, and those who from choice or circumstance are to pursue industrial callings are fitted both mentally and physically to enter such field.

Does our common school education fill this requirement in fitting its pupils for the practical affairs of life? Results prove to the contrary. Boys never incline to a trade, and are not specially fitted for anything. Neither do the misses take kindly to, and are entirely unfitted for, entering a kitchen and practicing that important calling of how to keep house. As with the boys, the girls are unqualified for any department of self-support (if it be necessary) or practical usefulness, unless to become a schoolma'm, and teach others the same false education and ideas of life that she is the victim of herself.

The mental stuffing that youths are subjected to is injurious both to mind and body. While the moral and intellectual faculties are slow in developing their influence, yet the brain, altogether, in size and activity, matures more rapidly than any other portion of the human organism; and while its better and less active qualities should be influenced, and may be stimulated, the brain as a whole should be checked in natural activity rather than pressed.

Many brains and bodies both are injured, if not destroyed, by over-taxing the former. Dr. Hammond, in "Popular Science Monthly," says:

A child twelve years old with her mother called on me professionally. In the course of my examination I emptied her satchel of the books it contained—her studies that morning and the evening before—and found: 1, An English grammar; 2, a scholar's companion; 3, an arithmetic; 4, a geography; 5, a history of the United States; 6, an elementary guide to astronomy; 7, a temperance physiology and hygiene (whatever that may be); 8, a method of learning French; 9, a French reading book. Nine different subjects which that poor child was required to study (outside of school hours, when she ought to have been resting, playing, and relieving the brain), between three in the afternoon and nine in the morning. A very simple investigation satisfied me that she was living on her brain capital, instead of her brain income. Her expenditures were greater than her receipts, and brain bankruptcy was staring her in the face.

But these objections to the common school system, and the advantages of some, at least, of the proposed reforms, are too apparent and too generally indorsed to justify argument, although the problem is difficult of solution.

Technical schools are being established, and many minds are working on this industrial education subject; but no positive steps have yet been taken in any of the States to make it a permanent part of the common schools.

Industrial schools are in the right direction; but the tools, instead of being used as they now are, for pleasure and recreation, should be the tools of an actual apprentice at a permanent trade, for a life business. Give the youth a chance to practice and choose an occupation, and instinct will likely make no mistake in selecting, thus promoting contented industry, prosperous happiness, and preventing crime.

Mental and industrial education should progress together. In Germany, from fourteen to seventeen (three years), while the youth is apprenticed to a trade, a night school is provided which he must attend.

The practice at the Elmira, New York, State Reformatory seems also in the right direction. There the education of the mind and the muscles go hand in hand. One is a help and health to the other, and both do better together than either would do singly. Under the Elmira plan, the natural qualities of the prisoner are developed, and he is released ready to follow up his studies for either a profession, or in the line of the arts and sciences, or as a tradesman, or a laborer, according as his natural qualities and his inclinations point.

With a legal school population in the United States of over sixteen millions, employing about three hundred thousand teachers, and at a yearly cost of perhaps \$200,000,000, what a power our common school system has become, and if properly directed, what a preventive to crime it might be made.

In concluding this chapter, it can at least do no harm to suggest (for those who are much more competent than the writer to think about, and who may chance to read) a common kindergarten school for all children up to a certain age, after which a system of State schools representing the different classes of business, trades, industries, and professions, to be under the direct management of the department to which it pertains.

The primary department would develop the bent of the child, indicating the particular branch of business or occupation that nature intended it for; and where its trade, business, or profession, and the course of study specially pertaining to it would be taught, and all go on together. While each department would be managed by the association to which it belonged, yet the State should appropriate so much per capita, and exercise a supervisory control; and all would be done probably at less cost than under the present system. Much of the labor performed in the industrial departments would be productive and remunerative.

May I be pardoned the presumption of the above suggestion.

It is not that I love common schools less but more, that prompts the preceding.

May I call special attention to answers to questions under preventive head.

## INCARCERATION.

The incarceration period, while perhaps less important in results than other branches of the penal prison subject, is more difficult to understand, and more complicated and varied in the manner of administration.

While I found among penologists in the East a very great unanimity of sentiment on the important questions underlaying the entire subject, yet I found the systems of carrying out, as varied almost as there are prisons in number; nearly all advocating the same result, while traveling different roads to reach it.

When I commenced the study of the subject, my first impression was punishment with incidental reformation; and my first ambition was to account for crime. Now, the opposite, with regard to the former, is my firm belief—reformation, where possible (and isolation where impossible), and all punishment incidental. Just such punishment as a physical patient suffers in taking bitter medicine, or having a deformed limb pressed into shape. The same kind of punishment for breaking human laws that follows breaking natural laws. Nature's laws are not established for the punishment of those who disobey them. Fire is not made antagonistic to flesh to punish paws for pulling out chestnuts.

No! We should realize that the old Mosaic doctrine, of "an eye for an eye, and a tooth for a tooth," although still entertained by many, has passed away with the advent of Him who said: "Let him who is without sin, cast the first stone," and to the woman, herself: "Go! sin no more;" and who reformed and pardoned the thief on the cross.

As to crime cause, I soon ran it out beyond my depth, leaving it swamped with original sin on the coast of mystery. For some cause, only to be guessed at, sin and crime are made attractive to the human family: "We are prone to sin as the sparks are to fly upward." We are created free agents, with good and evil both placed before us; one appeals to our passions, and attracts; while the other appeals to our better moral natures, and pays. As we deserve credit only for that which we resist, perhaps nature may have simply arranged an opportunity of exercising the purifying virtue of self-denial. While we all by nature incline to do wrong, yet the same nature has given us a conscience, ever active, approving right and reproofing wrong. Under its influence the many repent of offenses. Repentance is reformation, and they are saved to good citizenship, without the world having the knowledge on which to base uncharitable cruelty, or the law getting hold of, to confirm in crime. The blanket of secrecy has saved many, that public knowledge and the law, under the operation of detection, would have confirmed in crime.

Nature, in the moral, as in the physical, inclines to heal. Both at times are liable to such severe accidents or derangements as to require help. In physical trouble, if the physician called in understands his profession and acts in harmony with nature, benefit may be anticipated; if not, harm may result, and the patient left in a worse condition than if no physician had been called. So in the moral. Do prison results show good diagnosis and treatment? Or do results indicate quackery? We should study moral as well as physical hygiene.

The fact that crime is increasing all along the line means something. Ought we not to cut loose from superstitions, pet theories, and

practices, and study nature and natural laws as a guide? Next to being right is the knowledge that we are wrong. It is better to prospect, even, for the right, than remain knowingly wrong.

Nature is a safe guide, whose star invariably points to a savior. Human reason may err, but nature, properly understood and followed, is success. "God never made a truth into which he did not put a power," to be courted or to be feared.

From a nature standpoint I feel safe in pronouncing all men criminal, but with reproofing consciences, tending to heal moral sores. All prisoners retain their human natures. The prison gates do not swing to admit alone the flesh and devil of the convict; they open for the whole human make up, and he takes with him into the prison his conscience prompter, his hopes and his fears, his likes and his dislikes, his loves and his hates, his entire humanity as he possessed it in free life, with some qualities of his nature rendered more sensitive by his condition. I never have come in contact with any branch of the human family who have so quick a sense of truth and justice as those who are entirely dependent on others for the exercise of those qualities toward themselves.

I ever find myself more inclined to study how things are than to investigate how they came so. The former is practically useful, while the latter is only theoretically interesting.

It is a practical fact that we are here completely enveloped in sin, crime propensities, and surroundings; how it comes to be so, is an interesting mystery.

The muss seems to have started away back in the garden, between Adam and Eve, the snake and the devil. As a rule, I incline to class woman more with angels than with snakes and devils; but for once she is found in very bad company, and the devil has been to pay ever since. Would that the fig leaf had been an eraser, to have blotted out a naughty past and to have saved a troubled future.

While we there, in this garden fall, find the nucleus of our human trouble, so there also do we find a panacea. "In the sweat of thy face shalt thou eat bread," is a Divine edict contemporaneous with sin. It is not only that labor that produces sweat, but productive labor, that produces bread. Trying to avoid this labor law of nature makes criminals; exacting it is both preventive and reformative.

In addition to this higher law, there is no human principle more exacting than that every member of society shall support himself and those dependent on him.

Therefore, as all laws, human and divine (including prison laws and the unwritten laws of society relating to self-support, the prevention of crime, and the reformation of criminals), demand productive labor, it must be exacted of all prisoners. The important question remaining is, how to do so with the best results to the prisoner and the least friction to society. My simple solution of that is, to multiply trades and industries, so as to have a greater number of employments to select from, thus enabling the officer in charge a better opportunity of selecting a business adapted to the prisoner. And, further, to in so multiplying trades and businesses, minimize the free labor objections to convict labor. For, as every person and class should bear no more than their just proportion of tax to support the prisons, it is obviously unjust to turn large numbers of prisoners to work on one class of labor or industry, thus making that business or industry pay more than its proportion of what should be a general

uniform burden. With this will be found (Appendix B) an exhaustive report of a special committee of the New York Prison Association on this convict labor subject.

While I incline to be humanitarian in my view, and while I believe that many get into prison wrongfully who are absolutely innocent, and that many more, who, under the influence of circumstance, "that blind god and miscreator," have committed crime without being criminal, and who, through proper natural treatment, would not be driven into, but helped from, following farther that destructive course, yet I am forced to believe in total depravity also, and that there are those in our prisons who never should get out.

There are two prominent classes of convicts. One, composed of those who are not criminal, even though they may have perpetrated crime, and who are anxious to help themselves, should be helped; while the other class, the professional incorrigibles, should be kept.

Hope and fear, the feelings that enter into and animate our every day free life transactions, are the prominent human nature feelings to appeal to and excite in prison life; and the law and practice which will appeal in the strongest manner to these feelings is the best.

Under an indeterminate sentence law this treatment can best be carried out. It helps the innocent and the deserving, and enables the detention of the evil-minded until either cured or declared incorrigible, when they should be isolated—put beyond the power of pardon or escape, and the reproduction of their species. All deep thinkers, readers, and writers, in the East, whether or not they believe it practical as yet to carry out, believe in the principle. Under it the crying evil of inequalities of sentences would be rectified.

Should not the legislative department define crime, the judicial determine guilt, and the executive, through a board for that sole purpose, determine the time and character of treatment? Under the operation of such a law, the circumstances surrounding the Judge at the time of trial and sentence—his physical, mental, or moral peculiarities or condition at the time—is of less consequence.

On this subject H. H. Giles, of the Wisconsin Board of Charities, says in a communication in the "Chicago Daily News:"

Judges are human and their moods are variable. In my opinion the first step in prison reform is to abolish all time sentences, and commit convicted criminals to the care of a Board of Managers, or other State authority, who shall determine how long the safety of society requires the detention of the criminal. I can imagine nothing more reformatory than this with the criminal class, and the deterrent influence would be beyond estimation. There is nothing in the way of such a change in our criminal laws as will bring about this reform, except a blind, timid conservatism.

I fully agree with Mr. Giles. The best interest of the prisoner is the best interest of the State. Without hope the person is morally dead. Hope can only be fully built and kept up through indeterminate sentences. "Put every prisoner's pardon in his own hands," or the reverse if he so elects.

There is as great a difference in the nature and character of prisoners as that of persons in free life. It is horrible to witness all classes incarcerated in the same prison; the child of ten or eleven tender years with the old incorrigible; the innocent there through mistake; the non-criminal there through accident and circumstance; the gentleman in instict and the blackguard, all together.

No law of God justifies such a state of things; no law of man should

permit it. This nineteenth century outrage is constantly appealing for some reformatory system of classification.

After determining on a penal system for the State, all, including county jails, should be unified under one head; brought under the same general system and discipline, from top to bottom.

There is nothing connected with the subject, that experienced penologists of the East, both practical and theoretical, are more agreed upon than this. Herewith will be found (Appendix C) a very interesting and instructive article, on county jails, and reasons for their being under State control, by Eugene Smith, of New York Prison Association.

I ask special attention to the answers given to question regarding prison directorates. Our system is certainly wrong. As a rule a poor man cannot, and a rich man will not serve without salary, and give that time and attention which the importance of the subject demands. The law (or constitutional provision) should not be so worded as to engender misunderstandings with regard to compensation.

The question relating to non-partisanism in prison management, also brings up a subject laying at the foundation, among the first principles of prison reform, and good prison management.

It may not be out of place here to allude to partisanship as connected with prison management. Under the genius of our Government we must have parties, and the nearer those parties are balanced in power, the safer and better it is for the country, and we cannot keep up parties without the offices; therefore all things being equal we may be expected to vote with our party even without issues.

But there are certain institutions that ought to be non-partisan, and the different parties ought to come together and declare them such, and sacredly practice their philosophy. Among such institutions are our prisons; all should join in elevating their management to a plane above party.

Political offices, that involve only dollars and cents, are comparatively of little importance to those involving the lives and destinies of large classes.

"Results are not obtained by hospital or prison walls, but by the treatment inside."

We cannot overrate the importance of having good prison officers. A poor law only handicaps a good officer, but a poor officer nullifies the most perfect law. Some one says very truly of officers: "There are two extremes of character, two qualities apparently inconsistent with each other, which must yet be combined to form the highest style of prison officer." "There are men who are all lion, all firmness, but destitute of any sympathetic feeling. Again there are men who are all tenderness, all sympathy, but void of all tenacity of purpose." "But the true prison officer will be firm as a rock, and yet tender and sympathetic in his feelings, so that when the occasion requires, he can stand like Mount Blanc, or weep like a woman."

Partisan management militates against stocking prisons with such officers; the Constitution of California is noted among all prison people in the East, for its non-partisan provisions; and you, Governor Stoneman, deserve the gratitude of all for carrying out its spirit.

May our future prison progress keep pace with our past. How delighted I should be if California would forge to the front and please the entire prison world of reformers by boldly declaring in favor of "indeterminate sentences."

Then a Board belonging to the executive department, and, to illustrate, composed, say as follows: Governor, ex officio Chairman; one member selected by the Supreme Court Judges, from their number, to guard law points; one member from the Board of Health, to judge of the physical condition; one selected from the religious world, to represent that sentiment; one from the Board of Trade, to look after the best business interests of the State, with the Chief of Police in San Francisco, who would watch the effect from a police-crime standpoint. Some such Board, operating under an indeterminate law, with all the prisons of the State unified and graded under it, with the entire prison management entirely divorced from partisan politics, and the prisons officered as they only can be under civil service rules, would furnish the necessary missing link to future success in penal management.

Under such a system, instead of manufacturing criminals as now, we might expect, besides the moral aspect of the question, to see thousands, if not hundreds of thousands, saved to the State yearly, in restoring convicts to productive citizens, and in the cost of commitments.

Every class of prisoner, from the convict without crime, who never should have been in, to the criminal without hope, who never should get out, ought to be satisfied with that justice which permits them to exercise the God-given privilege of free agency, in allowing them to make their own future through an indeterminate sentence. Those who will not benefit by it have but themselves to blame.

#### AFTER STAGE.

The State in protecting society against the convicted criminal, whether justly convicted or not, has to destroy, to a very considerable extent, his character, and to blacken his prospects for the future in life. The object being, not punishment for past offense, but protection against similar offenses in the future, the State should be specially interested in permanently carrying out the intent. Convicts, whether criminal or not (and there are certainly many of the latter who, if not entirely innocent, are only the victims of accident, circumstance, impulse, or passion), leave the prison disgraced, without, perhaps, money or friends, and the hand of every one against them. Under such circumstances, is it strange that the best intentions will be dissipated and the strongest resolutions fail? As the intention is, or should be, to protect society in reformation, or through fear of consequences prevent a repetition of the offense, and as it costs thousands, on the average, to commit, or recommit, would it not be pecuniary wisdom, as well as simple Christianity, to try and hold up after lifting up? Is it not the duty of the State to "protect the ex-convict against society, as well as to protect society against the criminal?"

It is a moral more than a money help he needs. I disbelieve in moneyed help for the able-bodied without a consideration in all cases. It is demoralizing. Work should be given and exacted to pay for necessities furnished.

It is stated that "during the decline of the Roman Empire the poor of Rome became so demoralized by the amount of charity bestowed that they to a great extent ceased to work." The prisoner needs moral sustenance and help to get work. "Man is a social being, and his duties are social." Taboo him socially, and his hope and ambition are gone. Taboo his labor, and he is driven to crime. "Treat him

like a dog, and he behaves like a dog." "Constantly disgraced, he continually grows worse." "Humanity is reformatory; reformation is economy." To recommit him is expensive; to furnish him work, or to employ an agent to advise, and strengthen, and help him get work, is justice, humanity, and economy. The parole system is in this direction, in "training him in society for society."

As grandly bearing on this whole subject, and as applicable (and should be interesting) to all mankind, free or bond, I file herewith as part of this report (Appendix D) an oration of Governor Seymour on the fourth of July, 1879—on Liberty Day—to those entirely deprived of liberty—the prisoners in the Auburn, New York, Penitentiary.

The following are the questions formulated and submitted:

#### THEORETICAL QUESTIONS.

To ————:

In behalf of the Penological Commission of California the annexed classification has been adopted in formulating the following interrogations:

*Preventive.*—Saving from crime.

*Incarceration.*—During confinement.

*After Stage.*—Caring for the discharged.

#### I.—Preventive.

1. What is considered the best system of saving the ungoverned and uncared for children and youths of both sexes from criminal life?
2. Is it right or practical to in any way connect the common school system with preventive institutions?

#### II.—Incarceration.

1. Is punishment an object in imprisonment, or only an incident?
  2. Having in view mainly protection to society, and reformation where possible, should not all laws and treatment be addressed to hope and fear, as the mainsprings of human action; leaving the prisoner largely to make his own future?
  3. As Judges cannot tell when, or whether at all, reformation can be effected, and as no law should contemplate the discharge of a criminal on society, are fixed sentences right in principle?
  4. Prison laws allow credits for good behavior. If we can shorten the time of the deserving, why not be empowered also to extend the time of the evil minded? Have an indeterminate maximum as well as minimum? Some form of "indeterminate sentences?"
  5. Is the "parole" system good and practical?
  6. Where should the pardoning power be lodged, and how exercised?
  7. Should it not be made the duty of all Judges, between conviction and sentence (if not fully developed on the trial), to collect evidence of the past life, habits, business, family, etc., for the purpose not only of guiding them in their sentences, but to send up with the commitment, for the benefit of those who are to take charge of the convict?
  8. As labor for prisoners is not only a legal and an economic demand, but is also necessary to discipline and reclamation, what is the best solution of the "convict labor" question?
  9. Should self-sustaining in prison management be a prominent question, or only secondary to other considerations?
  10. To intelligently and effectually treat prisoners, should not the officer in charge know and study each one individually; and, if so, what is the greatest number that should be confined in any one prison?
  11. What action can be taken to make a second (or more) timer in one State the same in all.
  12. What plan of buildings is considered best in prison architecture?
  13. What system of prison directorate do you approve; and should it devote whole time and be salaried?
  14. How can the evils of county and municipal jails best be remedied?
  15. Is there a point at which a criminal should be declared incorrigible—totally depraved, without hope of reclamation? If so, should he be isolated—put beyond the power of pardon, and the reproduction of his species? And what power should decide, and how carry out?
- (One question—connected with the separation of the sexes—is avoided, because too difficult to think about.)

#### III.—After Stage.

1. Should the State do anything to help worthy discharged convicts into self-sustaining free life; and, if so, what; and how? From even a moneyed standpoint, is it not economy to do so?



## IV.—General to All.

1. Should all the institutions of the State be unified under one common head?
2. What are the most effective steps that can be taken, to render prison management entirely non-partisan?

Please make any other suggestions not covered by the above questions.

W. C. HENDRICKS,  
President Penological Commission, California.

## PRACTICAL QUESTIONS.

To ————:

In the interest of prison management for California, and in behalf of the Penological Commission of that State, the following questions have been formulated and propounded to you as a practical prison officer. In answering, please sign in your present or former official capacity:

1. How should the officers and attachés of a prison, other than the Warden, be appointed?
2. Should the Physician and Chaplain be entirely subordinate to the Warden, and subject to his arbitrary discharge, or more or less independent of him?
3. Should prisoners be treated as humanely as possible consistent with safety and discipline, or their treatment made strict and severe?
4. Should prisoners, under proper restrictions, have the privilege of appeal from the officer in charge to the Warden, and from the Warden to the Directors, or of writing the Governor without official surveillance? What would be the effect on discipline of their knowing that there was such an appeal to a power behind their officers?
5. What form of punishment do you approve of in enforcing prison rules?
6. What form of religious observances should be enforced?
7. To what extent, and how, should schooling and moral instruction be conducted?
8. To what extent may the friends and relatives of prisoners be allowed to see them, and what is the effect of ordinary unrestricted visiting?
9. What is the effect of general newspaper reading?
10. Should prisoners be allowed comforts and luxuries from friends?
11. What would you name, and how would you arrange and classify, a complete prison system for a State?
12. What plan do you approve of for treating the insane, and partially insane, criminals? Would you have an insane department connected with a prison?
13. Is it a fact, in prison management, that "*offenses have diminished as penalties have softened.*"

Please make any suggestions occurring to you, without confining yourself to questions, and oblige,

W. C. HENDRICKS,  
President of State Penological Commission of California.

The following answers are segregated according to subject, and given precedence according to their date, excepting the article of ex-President R. B. Hayes, whose communication is presented in full under the first question. This is done for the reason that he, instead of answering consecutively for himself, indorses the answers of General R. Brinkerhoff, adding some valuable suggestions of his own regardless of questions, yet pertinent to first interrogatory.

## I.—Preventive.

1. What is considered the best system of saving the ungoverned and uncared for children and youths of both sexes from criminal life?

Though not intended for answer to above question, yet, for reasons given above, I append EX-PRESIDENT HAYES' contribution entire under this head:

FREMONT, OHIO, January 9, 1886.

MY DEAR SIR: Inclosed herewith I send you the replies of General Brinkerhoff to the questions prepared and printed by you in the interest of a prison system for California.

The replies of General Brinkerhoff are full, explicit, well considered, and, in my judgment, in all respects excellent. To what he has so well said I will add, at your request, a few suggestions. They may

be wide of the mark so far as California is concerned, but they are certainly applicable to the situation in many of the States.

1. There should be a reform of criminal laws and procedure which will get rid of, or at least largely diminish, the uncertainty and the delays and expense of criminal trials.

2. Prison management should be non-partisan, and all prison officers should have such salaries and terms of office as will secure the services of men of the requisite character, capacity, and efficiency.

3. To prevent crime the young should be educated to habits of industry; to respect labor, and so as to enable them to make their own living by the work of their own hands.

On these points I give a few extracts from remarks made by me at the National Prison Congress recently held in Detroit:

"In dealing with criminals the friends of prison reform, while they remember that justice must be tempered with mercy and that convicts must never be regarded as beyond the reach of human sympathy, will not fail also to remember that the virtues of mercy and sympathy are not to be allowed to swallow up every other virtue.

"The end aimed at in legal punishment so far as concerns the criminal, is not vengeance, not mercy, not absolute justice. It is the welfare of society. Whoever wishes to protect society from crime will find upon reading the extensive programme prepared for this Congress that it embraces among its topics the punishment and reformation of criminals, the prevention of crime, and the far reaching and enduring influences of labor, of education, and of religion.

"Preliminary to all consideration of the treatment of prisoners we are met with objections to the practical modes of procedure by which the laws relating to crimes and criminals are enforced. A growing opinion prevails that the object of our association, which is first stated in its constitution, should be the first attended to. The complaint is that as a general statement the law, as administered, leans to the side of the criminal and against the interest of the public. Governor Seymour, the President of the Baltimore National Prison Reform Congress, made this emphatic statement. Said he, 'No one feels that there is in this country a clear, strong, even flow of administration of criminal laws.' Wherever this opinion is found, and to the extent that it prevails, it stands in the way of all prison reforms looking to an improvement in the condition of the prisoner and to his reformation. The popular resentment towards criminals is inflamed by what are deemed unreasonable obstacles to his prompt and speedy trial, conviction, and punishment. Let the accused have a fair but prompt trial; let there be no well founded apprehension of his escape by delays, by technicalities, or by other undue advantages; let the public mind confidently rest in the belief that the guilty will not escape, and beneficent and well advised prison reforms will then have a fair hearing, and be no longer regarded as visionary projects to smooth the pathways of the enemies of society. It is not to be denied that in important cases continuances for long periods often defeat public justice. Trials are not infrequently unreasonably protracted at large expense of time and money. In many States intelligent citizens are practically excluded from juries in criminal cases by the rule on the subject of opinions formed from reading the newspapers. In some States the accused almost selects his jury by the large number of challenges, without cause, which the law gives him. After trial and conviction judgments in many cases are set aside by the higher Courts

on technical grounds, without reference to the merits. The rules under which these results are obtained come to us for the most part from England, by whose condition, at the time they were adopted, they seemed to be required in order to protect innocent people from persecution by despotic power. Here, however, criminal prosecutions are not against, but in behalf of good citizens. Let all trials be fair and without undue advantages either in favor of the accused or the public, and let equal and exact justice be done. With prompt prosecutions in cases of crime, with speedy trials, with enlightened rulings as to juries, evidence, and new trials, with proceedings before higher Courts in accordance with our institutions, all wise suggestions looking to the welfare and reformation of convicted criminals will then receive that full measure of intelligent consideration which they deserve, but which is now often denied to them. On this subject we should appeal to the lawyer and lawmaker for reform. A lack of popular confidence in the administration of justice begets crime, emboldens the criminal classes, and leads to lawless violence and an endless train of other calamities. Surely we do not in this country need that body of technical law in criminal cases which in the evil days of England's worst Kings was employed by humane Judges as a shield to protect innocent men and women from persecution by an irresponsible and tyrannical government. The mischief from which we suffer is not the conviction of the innocent, but the escape of the guilty.

"Our programme provides, as it should, for a very full consideration of prison management—its principles and its methods. But sound principles and wise methods do not necessarily secure successful prison management. What has been said of governments is true also of prisons. That which is best administered is best. The first requisite of a good prison is a good head. Subordinates fit for their places is the next requisite. How best to get these and to keep them ought to have been settled long ago. Intelligent men do not quarrel with party government. Party government and free government are almost convertible terms. But in some places party government is out of place. Burke wisely and pithily said, 'Politics and the pulpit are terms that have little agreement.' Party politics and the prison have no agreement. All experience proves that party management is the ruin of a prison, and adds no permanent strength to the party having it. The divorce between the prisons and politics should be total and absolute. By the connection between them, party has rarely gained and the prison has always lost. The one great reform entirely practicable in all the States, and in the prisons of the general government, is to apply to prison offices of every grade the principles and rules of the civil service reform. The appointment, tenure, and compensation of all prison officers should be such that men of character, amply competent to fill them, will regard them as desirable, respectable, and honorable.

"Last week I had the privilege of listening to a very able report of the Trustees of the Peabody Education Fund by Dr. Curry, of Virginia, our newly appointed Minister to Spain, on Education in the South. Among other notable things, he said:

"Laws for the prevention and punishment of crime are necessary parts of civil life; but the wiser and more humane efforts should be to elevate the condition of the people, to give them the means and the opportunities for improvement, and to stimulate aspirations for

bettering their condition and fulfilling more perfectly the duties and obligations of life. The public good is a higher object than any private interest. Universal education, in the language of our founder, is "a debt due from present to future generations." It is an obligation of property, a proper return for protection afforded, the surest guaranty of security and increase.

"The general fact urged by Dr. Curry does not need illustration or argument. The special interest of this association in the subject is indicated by the question, '*How can our system of popular education be improved so as more effectually to aid in the prevention of crime?*' It must not be inferred from this question that there is doubt as to the influence of our present systems of public education. That influence is clearly and powerfully on the side of morality and honesty. But cannot this influence be vastly widened and strengthened? In the existing condition of criminal statistics in the United States one may well hesitate if asked, what is the chief source of crime in our country? Among the capital leading causes of crime, we must surely class the inability and the unwillingness of our young people of both sexes to make their living by manual labor. Last year Mr. William Mather, a member of the English Royal Commission on Education, submitted to his government a report on American methods of education, in which he said:

"Too large a class of young people of both sexes in America are seeking pursuits that avoid manual labor. Their education in the high schools and colleges tends rather to unfit them for the active industries of life in a country where the vast resources of nature are waiting for willing and trained hands to utilize them. The native-born American hates drudgery, and all the mechanical arts, when pursued without some knowledge of science to employ and interest the mind while the hands are active, is more or less drudgery. The American boy, with his inborn ambition and natural ingenuity, would cease to regard manual labor as drudgery if his mind were industrially trained during the school period. He would, therefore, be led into industrial employments by choice as the readiest means to climb to a higher position in life."

"Horace Greeley said: 'The darkest hour in the history of any young man is when he sits down to study how to get money without honestly working for it.'

"Proverbs old and new, in many languages, tell us that an idle hand is Satan's tool. If I were asked to name a measure of reform which is practically within our reach and best fitted to prevent, or, at least, largely to diminish crime, I would say let our young people of both sexes and of all conditions be taught, as a part of their education, 'to know the value of work, to catch the spirit of work, and to form the habit of work,' not only with their brains but also with their eyes and their hands. To do this we need not give up the classics, or mathematics, or any other favorite study. 'Hand training,' says Dr. Haygood, 'quickens mental faculties that no mere text-book drill awakens.' It inculcates respect for labor. The young man who despises labor carries with him into every walk of life one of the most dangerous temptations to crime. The young man of industrious habits, who can support himself by the labor of his hands, has acquired what the poet, Burns, calls 'the glorious privilege of being independent.'

"The State can do few things more sure to prevent crime than to provide for all her children industrial education."

California, by the unparalleled munificence of Governor Stanford, is to have at the head of her educational system a university endowed far beyond any other institution in our country, or, perhaps, in the world. The friends of practical education rejoice to know that its founder, with a sagacity equal to his generosity, will make ample provision for that industrial and moral training which aims specially to fit the young for the practical duties of life. By basing her free education on these principles California will possess the most effective means for preventing the increase of crime.

Very respectfully,

R. B. HAYES.

Hon. W. C. HENDRICKS, *President Penological Commission of California.*

CHARLTON T. LEWIS, Esq., Chairman Executive Committee of the New York Prison Association, makes answer as follows to the above: "In answer to your interrogatories of yesterday, I take pleasure in giving you a frank expression of my views, trusting that whatever may be defective or erroneous in them will be supplemented and corrected by your better judgment, and by inquiries of those who are more competent than I to discuss this important subject.

"1. Upon the first point, the method of preventing crime, I have nothing new to suggest. The first duty of society in the matter is doubtless to protect children and youth, whose family life is not a safeguard, against influences which form the criminal character; and, next to this, to stimulate the conscience of all and deter from offenses by making the administration of justice prompt, certain, and equal."

F. B. SANBORN, Secretary Board of Health, Lunacy, and Charity, answers:

COMMONWEALTH OF MASSACHUSETTS.  
BOARD OF HEALTH, LUNACY, AND CHARITY.  
OFFICE OF THE INSPECTOR OF CHARITIES,  
13 BEACON STREET, BOSTON, December 18, 1885.

W. C. HENDRICKS, *Esq.*:

DEAR SIR: I have not found time until to-day to answer your comprehensive questions concerning prevention, incarceration, and after care. I will answer your two questions under the head of prevention at once, because, in practice, the best system of saving the ungoverned and uncared for children of both sexes from crime is to connect our common school system with preventive and reformatory institutions. We do this, to some extent, in Massachusetts, by our truant school system, which I explained to you in conversation the other day, but which might be made more perfect than it is. Truant children at the public schools can, with us, be sent to the local reformatories, and even to the State reformatories, of which, in one sense, we have two classes. The State Primary School, at Monson, is a reformatory for younger children, and receives a considerable number of this class from the Courts. The two reformatories at Westboro and Lancaster—one for each sex—take the older children; and truants of the common schools may be sent to either of these three establishments and detained there.

Returning to the first part of your question, the best system of saving children from crime is that which begins earliest and places the child soonest in a good family. We attempt this in Massachusetts, not only by receiving deserted children into the custody of the State, but by taking from vicious parents their neglected children and placing both classes, as soon as possible, in worthy families, sometimes paying board for them, sometimes procuring their adoption, and sometimes allowing their services to be an equivalent for their maintenance in the family.

Z. R. BROCKWAY, Superintendent of the New York Reformatory, answers:

ELMIRA, NEW YORK, December 31, 1885.

Hon. W. C. HENDRICKS:

MY DEAR SIR: Replying to your interrogatories in the briefest possible way I am able to do, I have to say—first, that I consider the best instrumentality possible to be used to save ungoverned and uncared for children and youths of both sexes, to be that of the public schools of the State.

GENERAL R. BRINKERHOFF, of the Ohio State Board of Charities, answers: "In Ohio children and youths convicted of crime, are sent to the Industrial School for Boys, at Lancaster; or the Industrial School for Girls, at Delaware.

"Homeless children are sent to children's homes or orphan asylums. There are now twenty-five county homes for children, supported by county taxation, and more are being built every year, so that time is near at hand when all dependent children will thus be cared for. These homes are intended to afford shelter and training until homes can be procured for them in private families, by adoption or indenture.

"Properly managed, one half of the children thus received can be placed out each year, as has been fully demonstrated at the Protestant Orphan's Home at Cleveland, Ohio.

"In all these institutions, and for that matter, in all schools for the education and training of children, the hand and heart should be equally educated with the head."

A. G. BYERS, Secretary of the Ohio State Board of Charities, answers: "In cities or large towns, orphan asylums or children's homes supported by private charity, but incorporated under State law, is the better system, first, because, if properly organized and managed, they seek to place children in families; and, second, as affording opportunity for private benevolence in work as well as in money. The rural districts, under Ohio laws, are authorized to organize and maintain county or district homes (two or more, not exceeding four counties). These institutions meet an urgent demand of humanity; and in no particular is their good work more manifest than in the diminution of juvenile delinquency and crime. There is a vacant family building at present at our State Reform School for Boys, fairly attributable to the county homes, twenty-five of which are now regularly organized. These are supported by public tax; they supply the ordinary accommodations of a home, and provide for education, either in the institution or through the public schools. The homes are maintained at an average per capita, per annum, cost of \$91, while the average cost in our State reform schools and city houses of refuge ranges from \$114 to \$147."

M. J. CASSIDY, Warden of the Eastern Pennsylvania Penitentiary, at Philadelphia, answers: "By making parents or guardians by law responsible for the conduct of children until they arrive at the age, determined by law, that they can be held responsible for their own acts."

MISS ANNA DUNLOP, Clerk of the Indiana Reformatory for Women and Girls, Indianapolis, Indiana, answers: "DEAR SIR: In replying to your questions of circular: *Preventive*—1. This I have no formulated thoughts upon, but a feeling that careful home training lies at the base of the matter. Parents should be educated to see the importance of holding children in check. With orphans and incorrigibles, then a training as nearly like a home as possible, in institutions conducted upon family plan."

COL. A. P. BLUNT, Commandant United States Military Prison, Fort Leavenworth, Kansas, answers: "Houses of refuge, with kindergarten and manual training schools attached."

REV. OSCAR C. McCULLOCH, Pastor Plymouth Church, Indianapolis, Indiana, answers: "I think the kindergarten the best system, and you have in San Francisco in the Jackson Street, and other kindergartens, the most successful attempt yet made. To this there must be added a system of workingmen's schools, such as is carried on by Felix Adler in New York, or manual training schools, such as the one under Professor Woodward of St. Louis. In these schools, to my mind, lies the hope of saving neglected children."

WM. M. F. ROUND, Secretary of the National Prison Association, answers: "Where there are parents, put the responsibility and cost of law breaking upon them. Where this cannot be done make the children the wards of the State, and teach them full trades; train them to habits of industry, and build them up in moral, intellectual, and physical health."

COL. R. W. McCLAUGHRY, Warden Illinois State Penitentiary at Joliet, answers: "I think the best system is outlined by the late Rev. Dr. E. C. Wines, in his work on 'State of Prisons and Child Saving Institutions,' pages 607 to 610 inclusive."

To the second question, under *preventive* head—

2. Is it right or practical to in any way connect the common school system with preventive institutions?

CHARLTON T. LEWIS, Esq., answers this in connection with former question. So also does F. B. SANBORN, Secretary Massachusetts Board of Health, Lunacy, and Charity.

Z. R. BROCKWAY, Superintendent of the State Reformatory at Elmira, New York, answers: "I believe a way may be devised for connecting the preventive institutions of the State with public schools, without the degradation of the public school system—the true ideal of preventive institutions is that of State educational establishments."

GENERAL R. BRINKERHOFF, of the Ohio State Board of Charities, answers: "If by this question you mean the institutions I have described I would say, ordinarily, no. In exceptional cases, possibly, it might be done."

REV. A. G. BYERS, Secretary Ohio State Board of Charities, and former Chaplain of Ohio Penitentiary, answers: "Our county homes are organized as school districts, and entitled to their pro rata of school fund, or to send their inmates to public schools, allowing Boards of Education to draw their proportion of the school fund."

MICHAEL J. CASSIDY, Warden of the Eastern Penitentiary at Philadelphia, answers: "No."

MISS ANNA DUNLOP, of the Indiana Reformatory for Women and Girls, answers: "Seems to me both right and practical to connect the public schools with preventive institutions."

COLONEL A. P. BLUNT, Commandant United States Military Prison, Kansas, answers: "Only in text-books and methods of instruction."

REV. O. C. McCULLOCH, Indianapolis, Indiana, answers: "It is both right and practical. See Indiana House of Refuge."

WILLIAM M. F. ROUND, New York, Secretary of National Prison Association, answers: "The common school is always a preventive institution, but should never be so nominally. It would be more efficient as a means of crime prevention if trades were taught, as they are beginning to be in the schools of some cities."

MAJOR R. W. McCCLAUGHRY, Warden, Joliet, Illinois, answers: "If I understand the question, my answer is that, while I would make education compulsory in all such institutions, I would do so apart from the common school system of the State."

CHARLES E. FELTON, Superintendent House of Correction, Chicago, Illinois, replies jointly to both first and second: "Place ungoverned and uncared for children and youths in families, removed from former associates and surroundings, and subject them to elevating home influences, giving them the usual (school) educational development and *thorough industrial training*. Those who are not thoroughly vicious or criminal do not introduce to institutional life. Those who seem to be incorrigible may be confined so long as necessary to prepare them to *appreciate* home life, but no longer. Institution life, at best, is demoralizing if long continued. With the precocious, agricultural pursuits tend to keep back vicious development, and should be continued until youth life has given place to manhood. *Bridge over the boy part, and the young man is fairly safe.*"

#### INCARCERATION.

To the first question under this head—

1. Is punishment an object in imprisonment, or only an incident?

CHARLTON T. LEWIS, of the New York Prison Association, answers: "It is entirely clear to me that the infliction of suffering or privation, as a recompense for evil deeds, is no part of the prerogative of human government. The objects of imprisonment, and of all other forms of what we call punishment, inflicted by law, are properly—first, to prevent offenses by restraint; second, to deter offenders or tempted persons from crime by the apprehension of punishment; and third, to reform the criminal. They may be summed up in the duty and right of society to protect itself. Vengeance has no place in the theory of the subject; and the introduction of the idea of retribution into the discussion is always misleading and confusing."

F. B. SANBORN, Secretary Board of Health, Lunacy, and Charities, Massachusetts, answers: "I regard punishment as one of the objects, but only an incidental one, of imprisonment; others are much more important."

Z. R. BROCKWAY, Superintendent Elmira Reformatory, answers: "As to incarceration, I reply: Punishment is only an incident, not

properly the object of imprisonment. The real object of the State in imprisoning a criminal, is prevention from crime by incapacitation or reformation, that is, so far as the criminal himself is concerned; and I verily believe what is substantiated by statistics, that punishment properly so called, is not practically a deterrent to the criminally inclined class. Any deterrent effect upon the community at large to be had by the treatment of any criminal, is best and most to be had through a rational reformatory system rather than by primitive treatment."

GENERAL BRINKERHOFF, of Ohio State Board Charities, answers: "If by punishment you mean retaliation, or vengeance, I would say, no. If you mean that imprisonment should be a deterrent influence upon those outside, and a restraining influence after discharge, I would say, yes."

"In regard to law breakers, the State occupies the position of a parent (in loci parentis) and its objects should be substantially the same."

"In other words the object of imprisonment should be the protection of society, and the reformation of the criminal."

REV. A. G. BYERS, Secretary Ohio State Board Charities, answers: "Punishment should not be an object but rather an incident in imprisonment."

MICHAEL J. CASSIDY, Warden Eastern Pennsylvania Penitentiary, at Philadelphia, answers: "Incarceration is not punishment of itself, the application of the treatment during incarceration is the punishment."

MISS ANNA DUNLOP, Clerk of the Indiana Reformatory for Woman and Girls, answers: "Punishment only an incident; not the *object*."

COL. A. P. BLUNT, Commandant United States Military Prison, Kansas, answers: "An object. Reformation."

REV. OSCAR C. McCULLOCH, Indianapolis, Indiana, answers: "That depends upon the age and previous crime history. For the young, and for the first offense, the object should be reform. For others, the object is to protect society from them."

WILLIAM M. F. ROUND, Secretary National Prison Association, answers: "Punishment often is an object in imprisonment, it can only be an incident of reformation."

MAJOR R. W. McCLAUGHRY, Warden, Joliet, answers: "I consider the protection of society the chief object in imprisonment of the criminal; this object to be attained if possible by such methods of discipline as will teach him cheerful obedience to law, and restore him to society, a helpful rather than a hurtful member of it."

CHARLES E. FELTON, Superintendent Chicago House of Correction, replies: "Punishment is, and should be, an object in imprisonment; but not the sole object."

To the second question under the incarceration head:

Having in view mainly protection to society, and reformation where possible, should not all laws and treatment be addressed to hope and fear, as the mainsprings of human action; leaving the prisoner largely to make his own future?

CHARLTON T. LEWIS, Esq., of Prison Association New York, answers: "There is no doubt that prison discipline ought to aim at forming the habits of thought of the prisoner, so that he will realize his dependence for future comfort and welfare upon his present conduct. The criminal mind is defective in this respect, and usually needs a

long period of steady and stern discipline, in order to produce the quality we commonly call prudence."

F. B. SANBORN, Secretary of the State Board of Health, Lunacy, and Charity, Massachusetts, answers: "Society is best protected and the reformation of offenders most likely to take place when the prisoner is encouraged to direct his own conduct, and control his own impulses, under a discipline which promotes self-respect and addresses hope rather than fear. The most hardened criminals are not very sensitive to fear, and are accustomed to defy and evade rather than submit to a discipline which appeals to their fears."

Z. R. BROCKWAY, Superintendent Elmira Reformatory, answers: "I answer your second interrogatory, under the division of 'Incarceration,' in the affirmative."

GENERAL R. BRINKERHOFF, Ohio Board of Charities, answers: "Yes; but hope should dominate as an encouragement to those inside of the prison, and fear as a deterrent to those outside."

REV. A. G. BYERS, Secretary of Ohio Board of Charities, answers: "Yes."

MICHAEL J. CASSIDY, Warden of the Eastern Penitentiary, Pennsylvania, answers: "Reformation should be the basis of all treatment for crime."

MISS ANNA DUNLOP, Clerk of the Indiana Reformatory for Women and Girls, answers: "All treatment and laws should have in view the reformation of prisoners; to that end hope *must* be built up, and the prisoner made to feel that his future rests with himself."

COL. A. P. BLUNT, United States Military Prison, Kansas, answers: "Yes."

REV. OSCAR C. McCULLOCH, Indianapolis, Indiana, answers: "I think that Z. R. Brockway, in the Elmira Reformatory, has demonstrated the possibility of reform, and the economy of such efforts."

CHAS. E. FELTON, Superintendent Chicago House of Correction, replies: "Transpose, in your inquiry, the words 'hope and fear,' and italicize the word *fear*, and my answer would be in the affirmative. The strongest deterrent to the criminally inclined is the *fear* of the consequences of criminal act. The certainty of *punishment* is a deterrent. I do not favor severe disciplinary treatment to prisoners, however."

MAJOR R. W. McCLAUGHRY, Warden, Joliet, Illinois, answers: "They should, unquestionably."

To the third question, under the head of incarceration—

3. As judges cannot tell when, or whether at all, reformation can be effected, and as no law should contemplate the discharge of a criminal on society, are fixed sentences right in principle?

CHARLTON T. LEWIS, Esq., of the New York State Prison Board, answers: "The question of the indeterminate sentence is one of difficulty, owing to the fact that prison officers are not usually men in whose hands the great trust of determining the duration of imprisonment can safely be lodged. The practice of sentencing for fixed terms is absurd in principle, and leads to multiplied injustice; and in a future advanced state of civilization, we may hope that it will be unknown, and that a moral delinquent will be confined in a prison just as a physical sufferer is confined in a hospital, until the treatment is successful. But how fast or how far the reform in question can be carried with the present organization of our prison



authorities is a question only to be decided by gradual, careful, and wise experiment."

F. B. SANBORN, Secretary Massachusetts Board of Health, Lunacy, and Charities, answers: "Fixed sentences cannot be defended on principle, and are practically given up wherever 'good time,' or a shortening of the sentence for good conduct is allowed. It would be better to make the sentence at the beginning indeterminate, its length to be decided either by shortening or lengthening, upon an impartial observation of the prisoner's conduct."

Z. R. BROCKWAY, Esq., Superintendent of the Elmira State Reformatory, New York, answers under this question, also the fourth: "As to the third and fourth questions, I am opposed to fixed sentences, and am in favor of the indeterminate sentence, so called. Willing, however, to accept the proposal of the maximum determination fixed by law, until the public shall have been sufficiently educated to approve and adopt the indeterminate sentence, pure and simple."

GENERAL BRINKERHOFF, Ohio Board of Charities, answers: "No. The true system is the indefinite or indeterminate sentence. Criminals should be sent to prison as patients are sent to a hospital, to be cured; and not to be discharged until they are cured."

CHARLES E. FELTON, Superintendent House of Correction, Chicago, Illinois, replies: "Fixed sentences are safest and right in principle, as a rule; still, with first offenders, the rule may be varied, as in New York State. But the 'indeterminate' sentence is unsafe. Nor do I altogether like the New York State system of 'maximum' sentence, as at Elmira Reformatory. It often works very unfairly—unjustly. It leaves too much to the prison officials, who are very liable to err, and the prisoner becomes the *victim* of the errors. One feature is this: Two men are arrested for the same crime. One is an habitual criminal; the other is a first offender. Both plead guilty. The Court has jurisdiction to impose five or twenty years. He sends to State Prison at Auburn or at Sing Sing the habitual criminal, for the term of five years. He sends the first offender to the Reformatory at Elmira for twenty years—the maximum—but tells him that, by conforming to that excellent system, he may obtain his liberty in a single year. That is the law. Now, it very often occurs that first offenders do *not* conform to that 'excellent system,' and are classed as 'incorrigible,' and are *transferred* to the State Prison at Auburn or at Sing Sing, and *there* remain, under the maximum sentence, while the habitual criminal is earlier discharged, etc. I make no criticism upon Mr. Brockway. In my opinion, he accomplishes magnificent results. But the 'maximum sentence' and the 'indeterminate sentence' are seriously objectionable. The latter is especially so, in my opinion. I would prefer maximum sentences for all *crimes*, with a profuse use of the pardoning power of the Governor, upon the recommendation of prison managers, and upon investigations and recommendations of some proper officer *not* connected with the administration of the prison. The prevailing sentiment is, that it is *officious* for a Warden to recommend the release of a prisoner. I think it is his *duty*, if he thinks a prisoner should not be longer detained."

REV. A. G. BYERS, Secretary Ohio Board Charities, answers: "Crime is most frequently the result of either defective or deranged moral conditions. 'Fixed sentences' are not right in principle. Mental derangements are held subject to legal authority and restraint until cured. When we shall have trained and experienced specialists

in the treatment of the former, as we now have in the latter conditions, we will approximate the number of curative cases whether the treatment shall be curative or not."

M. J. CASSIDY, Warden, Philadelphia, answers: "Trials should not take place until thirty days after indictment, nor sentence imposed until thirty days after conviction."

MISS ANNA DUNLOP, Indiana Women's Reformatory, answers: "No."

So also does COL. A. P. BLUNT, United States Military Prison, Kansas.

REV. O. C. McCULLOCH, Indianapolis, answers: "Given a prison management non-political, and in the hands of the best men—men who make a study of the crime conditions of society, and the peculiarities of criminals—and sentences should be indeterminate; to continue so long, and no longer, than will replace the man in society as a productive factor."

WM. M. F. ROUND, New York, Secretary National Prison Association, answers: "Fixed sentences do not seem to me right in principle."

MAJOR R. W. McCLAUGHRY, Warden, Joliet, Illinois, answers: "In my opinion they are not."

To the fourth question under this head—

4. Prison laws allow credits for good behavior; if we can shorten the time of the deserving, why not be empowered also to extend the time of the evil-minded—have an indeterminate maximum as well as minimum? Some form of "*indeterminate sentences*?"

F. B. SANBORN, Secretary Massachusetts Board of Health, Lunacy, and Charities, answers: "I have answered this question above. Indeterminate sentences, or the nearest approach to them, are the best."

GENERAL BRINKERHOFF, Ohio, answers: "The ideal sentence is the indeterminate sentence, and with wisdom, justice, and absolute fairness in administration it must accomplish the highest attainable results."

REV. A. G. BYERS, Secretary Ohio Board of Charities, answers: "Indeterminate sentences I regard as equitable, and as affording a solution of many difficulties which now prevail in the administration of criminal law, as well as in the treatment or discipline of the criminal."

CHARLES E. FELTON, Superintendent House of Correction, Chicago, Illinois: "Time should never be extended. If a prisoner commits a *crime* while in prison, try him for it, as if the crime had been committed outside of prison. Do not permit *prison officials* to become complainants, witnesses, judges, and executioners. We are all 'most excellent,' etc., *but*, etc."

MICHAEL J. CASSIDY, Warden, Philadelphia, answers: "Commutation laws are a compromise with crime class people, of no benefit to society or the criminal, and only of use in administering a weak prison system."

MISS DUNLOP, Indianapolis, Indiana, answers: "Consider this an advanced step."

COLONEL BLUNT and REV. McCULLOCH say this question is covered and answered in the third.

WM. M. F. ROUND, Secretary National Prison Association, says: "I believe fully in the indeterminate sentence principle; have fully stated my reasons for this belief in my paper on *Christianity and the Criminal*."



MAJOR R. W. McCLAUGHRY, Warden, Joliet, Illinois, answers: "The length of the penal service rendered should be determined by the evidence the prisoner gives that he is a man fit to be again intrusted with the privileges and duties of citizenship."

To question No. 5 under this head:

5. Is the "parole" system good and practical?

CHARLTON T. LEWIS, Esq., Prison Association, New York, answers: "The system of paroling convicts is intimately connected with the general subject of caring for discharged prisoners. Too commonly, after serving a term, the guilty man is driven back to crime, even when he has shown real susceptibility to reforming influences; the neglect of organized society as represented by the State, and the opposition of society at large, combining to make difficult or impossible his restoration. This neglect is one of the greatest evils of our prison system; any plan for relieving it must needs involve some form of the parole system, and that now in use in the Elmira Reformatory in this State deserves careful consideration, its practical results being remarkably good."

F. B. SANBORN, Secretary Health, Lunacy, and Charities, Massachusetts, answers: "The parole system, or what we call ticket of leave, has worked well in practice wherever it has been adopted in connection with a good working system. Without that it would be partial and might be injurious to discipline."

Z. R. BROCKWAY, Superintendent Elmira Reformatory, New York, answers: "The parole system is good and practical, and necessary to any system of criminal treatment that affords proper protection."

GENERAL BRINKERHOFF, Ohio, says: "Properly administered it is of the highest value."

REV. A. G. BYERS, Secretary Ohio Board of Charities, answers: "If based upon the character and conduct of the prisoner the parole system is 'good and practical,' if subject to outside influences, it is of questionable propriety."

M. J. CASSIDY, Warden, Philadelphia, says: "The 'ticket of leave' principle is not practicable in this country, or of much use in any other, only to force the emigration of the crime class, thus inflicting their evils on others."

WM. M. F. ROUND, New York, Secretary National Prison Association, says: "It is 'good and practical,' and experience is teaching us how to make it more efficient."

MAJOR McCLAUGHRY, Warden, Joliet, answers: "I think it is both good and practical."

CHAS. E. FELTON, Superintendent House of Correction, Chicago, replies: "Not practicable in this country. When out of the State in which the crime was committed the paroled man is a free man. He cannot be returned to prison in another State. We cannot maintain proper police surveillance, besides, even if the prisoner stays in his own State. To a limited extent the system may be followed, however."

In answer to question No. 6, under this head—

6. Where should the pardoning power be lodged, and how exercised?

CHARLTON T. LEWIS, Esq., of New York, answers: "The arbitrary exercise of the pardoning power by the executive head of the State, is a serious defect in our government. The Connecticut plan of a

Board of Pardons, works well, and is, perhaps, the best device for modifying the customary provisions of State constitutions, now in force anywhere."

F. B. SANBORN, Secretary Board of Health, Lunacy, and Charities, of Massachusetts, says: "The pardoning power should be so lodged, either in the Governor, with an Advisory Board, or in a well selected Board, like that of Connecticut, and the principle should be to grant few pardons except upon conditions. This would be practically the ticket of leave system."

Z. R. BROCKWAY, Superintendent Elmira Reformatory, says: "The pardoning power should, I think, be lodged with the Executive, and, possibly, a Board of Advisers, but rarely used by him or them. The discharge of prisoners is best accomplished by the Court or Board having to do with the administration of the prisons themselves."

GENERAL BRINKERHOFF, Ohio Board of Charities, says: "The pardoning power should be lodged with the Governor alone; but an Advisory Board of Pardons may relieve and aid him in arriving at correct conclusions."

REV. A. G. BYERS, Secretary Board of Ohio Charities, says: "If there is to be a pardoning power it should lodge in the hands of the Chief Executive of the State. It would be better for every interest of the prisoner, as well as for the community at large, that no such power existed. The chances of pardon enter largely into the calculations of crime, creates and fosters undue hope in the mind of the prisoner, and operates to the prejudice of prison discipline."

WARDEN CASSIDY, Philadelphia, says: "Absolutely in the Executive of the State; such a great responsibility should not be divided."

COLONEL BLUNT, Military Prison, Kansas, says: "In a Board established for the purpose to make recommendations to the Governor."

REV. O. C. McCULLOCH, Indianapolis, Indiana, answers: "I think that there should be in each State a Board of Commissioners of Prisons and Reformatories, similar to the Board of State Charities. The function of this Board should include the inspection of prisons, both State and county; and that such Board should have the power of pardon, or of extending and limiting sentences. Such powers might belong to the Board of State Charities, but that body has usually enough to do without adding to its duties."

CHARLES E. FELTON, Superintendent House of Correction, Chicago, answers: "In the Governor *solely*; but he should have advisers, who should personally visit prisoners before being released; and he should consult Wardens as to all facts obtainable by them."

WM. M. F. ROUND, Secretary National Prison Association, says: "With the source of the sentence jointly with those who have the care of the sentenced. Under the indeterminate sentence system, the 'pardoning power' ceases to have the same importance in the State."

MAJOR R. W. McCLAUGHRY, Warden, Joliet, says: "In the Executive—but he should be assisted by a Board of Pardons composed of the best men that can be found in the State, selected so that the Board cannot be reached by political influence."

To inquiry No. 7 under the above head—

7. Should it not be made the duty of all Judges, between conviction and sentence (if not fully developed on the trial), to collect evidence of the past life, habits, business, family, etc., for the purpose not only of guiding them in their sentences, but to send up with the commitment for the benefit of those who are to take charge of the convict?

CHARLTON T. LEWIS, Esq., says: "It would be of doubtful utility to require a Judge to review, before sentence, the history, life, and character of the prisoner, and in many Courts such inquiries would be impracticable. If the indefinite sentence be carried out, such an inquisition is unnecessary. Otherwise, the conscientious Judge will ascertain, as far as he can, the facts which bear upon the proper duration of the sentence, while a rigid investigation of the facts which should determine the proper treatment of the criminal should be made by the prison authorities."

F. B. SANBORN, Secretary Massachusetts Board of Charities, says: "If it were possible for Judges, between conviction and sentence, to collect evidence of the past life, etc., of the convict, it would be very expedient to do so, but I fear this is impracticable in many cases. Perhaps the same object could be attained in other ways."

Z. R. BROCKWAY, Superintendent Elmira Reformatory, answers: "Replying to your seventh inquiry, every source of information as to the criminal and his antecedents should be gleaned and sent up to his custodian."

GENERAL R. BRINKERHOFF, Ohio, answers: "Undoubtedly it would aid him in arriving at correct conclusions, and the facts thus obtained would aid the prison management in the treatment of the convict."

REV. A. G. BYERS, Secretary Ohio Board of Charities, says: "It would aid justice, meet an important public interest, and contribute to the intelligent treatment of the prisoner."

COLONEL BLUNT, United States Military Prison, Kansas, says: "Not if the sentences are indeterminate."

REV. OSCAR C. McCULLOCH, Indianapolis, says: "Yes, unless you can secure such a Board as is outlined in 6, in which case such information would naturally lodge with them."

CHAS. E. FELTON, Superintendent House of Correction, Chicago, Illinois, replies: "In this State sentences are fixed by juries, save only when prisoners plead guilty. In the latter event compromises are usually made—the Judge agreeing to make certain sentence, etc. Besides, Judges will not thoroughly investigate a case after conviction. No, the way is to pass an habitual criminal act, and *prove* previous imprisonment. It is the offense committed that the man is to be punished for—not for having bad reputation. If his habits have not landed him into prison, they should not be called into question after trial, as he cannot there defend himself."

MAJOR McCCLAUGHRY, Warden, Joliet, answers: "Certainly. And the evidence so collected should, in all cases, be forwarded with the prisoner to the Warden, or governing authority of the prison to which he is sent."

Inquiry 8. As labor for prisoners is not only a legal and an economic demand, but is also necessary to discipline and reclamation, what is the best solution of the "*convict labor*" question?

Is answered as follows:

CHARLTON T. LEWIS, Esq., New York Prison Board, answers: "Your questions on the proper use and best form of labor in prisons are fully answered in a report about to be made by a special committee to the Prison Association of New York, which seems to me to be sound and instructive, and to this I beg to refer you."

F. B. SANBORN, Secretary Massachusetts Board of Charities, says: "The best solution of the convict labor question is hard to find. The

principle is clear enough that labor should be exacted of all convicts, and that it should be recompensed as fully as possible; for, of all classes in the community, those least deserve to be supported at the public cost whose lives have led them into crime. But how to organize this labor so as to interfere least with self-supporting laborers in the community is the problem. My own opinion inclines to what is called the 'piece-price' system, now in use at the Elmira Reformatory, I think, and, on a smaller scale, in our two Massachusetts reformatories for men and for women. But a combination of two modes of convict labor in the same prison is often an advantage in the shifting condition of the labor market, and of political sentiment, which will have more or less effect on prison management, as things now are in the United States."

Z. R. BROCKWAY, Superintendent Elmira Reformatory, answers: "The best solution of the convict labor question is (in the reformatory prison):

"1. Prisoners must be subjected to systematic labor.

"2. Mechanical labor is better than any other.

"3. If the prisoners within the prison are employed in divers industries for which they have natural adaptation, and which they are likely to follow on their release, employed substantially as they should and would have been if self-supporting, law-observing citizens instead of criminals employed for their own subsistence, and ordinarily restricted to their actual earnings for what they have and live upon, then no unnatural competition from their labor would be inflicted upon industries outside, and the best reformatory effect upon the prisoner himself would certainly be produced. I believe the contract system is unfavorable for reformation; that the public account system is better, and should be authorized by the law, and that what is known as the piece-price system should also be legalized."

GENERAL R. BRINKERHOFF, Ohio Board of Charities, answers: "This question is in a transition state, and can only be settled by experiment. I would give the prison managers large liberty of choice, and let them feel their way to a conclusion. Like a mariner in an unknown sea, they must take soundings as they go, and only anchor when they are sure of a safe harbor. My own opinion is that the piece-price plan, all purposes considered, is the most promising system now under consideration."

REV. A. G. BYERS, Secretary Ohio Board of Charities, says: "Probably what is known as 'State account' plan, providing again that competent and *experienced* officers can be retained."

M. J. CASSIDY, Warden, Philadelphia, answers: "The entire care of the prisoners should be in the authorities of the State. The State takes away the liberty of the individual as a penalty for a violation of its laws, and is alone responsible for its acts, and should not transfer any part of its responsibility. The method of treatment adopted by the State, of which labor is an important element, should be vested in the authorities of the State only."

MISS ANNA DUNLOP, Indianapolis, says: "Disregard public clamor; deal with this question from the reform point of view—best good for the prisoner."

COLONEL BLUNT, United States Military Prison, Kansas, says: "The contract system, properly controlled."

REV. O. C. McCULLOCH, Indianapolis, Indiana, says: "There must be labor, and on the other hand, honest labor outside of prisons must

not be forced to compete. Prison labor should never be sold to contractors. The State should work the men."

CHARLES E. FELTON, Superintendent House of Correction, Chicago, Illinois, answers: "I will send you a report for year 1884, of officers of this institution, which contains my expressions on that subject, but, in brief, circumstances may make it best to adopt one or another system of employing convicts. Theoretically, the public account system is the ideal. The piece-price plan is a makeshift. The contract system is extremely faulty, when the contractors own the plant and the prison officers. Not owning the officers, it is as unobjectionable as is the public account. It is the men at the head of the institution, not the *system* of employment. Read the report when you have nothing else on earth to do and want to kill time—pages 13 to 29, inclusive. I have also written a long letter to Mr. Round, Secretary National Prison Association, in reply to his report on labor, etc., which more fully canvasses some points. Also, you may find the opinions of several Wardens in printed proceedings of 'Conference of Officers of Prisons and Reformatories,' held at Chicago, December, 1884. Mr. Round, Secretary National Prison Association, Bible House, New York City, has them for sale—fifty cents each, I think. Other subjects were also discussed, almost exclusively by *practical men*."

WILLIAM M. F. ROUND, National Prison Association, says: "Referred to report on prison labor, issued by Prison Association of New York (Doc. 5)."

MAJOR McCLAUGHRY, Warden, Joliet, Illinois, says: "'A vexed question,' the answers to which must vary according to locality, size, and construction of prisons, the character of their population, the kinds of employment available for occupation of the prisoners, and the character of their management."

Question No. 9, under incarceration, and replies:

9. Should self-sustaining in prison management be a prominent question, or only secondary to other considerations?

F. B. SANBORN, Secretary Board of Health, Lunacy, and Charity, Massachusetts, says: "9. I used to think that all prisons for long-sentenced convicts ought to be self-sustaining, and still believe that the effort for this result should be steadily made. But it will not always succeed, and in the better prisons, perhaps not often. It is less important than the main object of incarceration."

Z. R. BROCKWAY, Superintendent Elmira Reformatory, says: "I think too much stress has been laid upon the financial results of prison labor by prison management hitherto; that the best economic benefit the State could derive is to be had when the prisoners can be rescued from the predatory class and made self-supporting, reasonably safe citizens. I believe the State should pay the cost of the convict establishment, and of all the general officers, and perhaps some of the general expenses, such as heating and lighting, where very large cost for these items is incurred; but beyond that, on the system of convict labor suggested above, there need be no cost to the State, or, to speak very guardedly, only trifling cost."

GENERAL BRINKERHOFF, Ohio, answers: "Manhood-making rather than money-making should be the governing principle in every prison, but I believe the observance of this principle will not necessarily decrease the revenues of the prison."

REV. A. G. BYERS, Secretary Ohio Board of Charities, says: "Prominence should be given, but it certainly is not the first consideration. I believe a prison of from three hundred to one thousand prisoners, under State account system, conducted upon a cooperative system—giving prisoners a share of the *profits*, not *earnings*, entirely practicable and of the highest utility."

M. J. CASSIDY, Warden, Philadelphia, says: "Self-support should be the aim of all teachers or directors of individuals in or out of prison."

COLONEL BLUNT, Commandant at United States Military Prison, Kansas, says: "Secondary."

REV. O. C. McCULLOCH, Indianapolis, Indiana, says: "Nor should 'self-support' be the only aim. The economic factor has been too much emphasized."

WM. M. F. ROUND, Secretary National Prison Association, says: "A prison should be as nearly self-sustaining as is compatible with the best protection of society—by the use of best reformatory measures. The prison that pays in dollars and cents is often far from profitable in the reclamation of offenders; hence no permanent protection against the criminal class."

CHAS. E. FELTON, Superintendent House of Correction, Chicago, answers: "Secondary, of course; but the *tendency* is to the extreme the other way, in some prisons; and in others, the debit balance being larger, the *boast* is, 'We work to reform convicts, not to make money.' Such officers seldom reform anybody, however, and their boast is but an excuse for bad financial management. The best managed prisons have shown best financial results; but the *motive* should not be money making to the exclusion of other interests."

WARDEN McCLAUGHRY says: "I would place it second to reformatory considerations."

Answers to No. 10—incarceration:

10. To intelligently and effectually treat prisoners, should not the officer in charge know and study each one individually; and, if so, what is the greatest number that should be confined in any one prison?

F. B. SANBORN, Secretary of Massachusetts Board of Health, Lunacy, and Charity, says: "Individual knowledge of each prisoner is necessary for his proper discipline, not to say reformation, and ordinarily five hundred convicts are enough for one person. But there are men, like Mr. Brockway, who can manage more than that number; yet I would never willingly go beyond eight hundred."

Z. R. BROCKWAY, Superintendent Elmira Reformatory, says: "Answering your tenth question, I have to say: No uniform or very valuable reformatory results can be had except by individual treatment, which involves knowledge of the individuals composing the prison population."

GENERAL BRINKERHOFF says: "Undoubtedly six hundred I would consider the maximum number, if reformation is to be considered."

REV. A. G. BYERS says: "The officer should know each prisoner. Six hundred should be the maximum, with a minimum sentence of one year."

WARDEN M. J. CASSIDY says: "The 'individual treatment' system is the best method by which the prisoner can be benefited or society protected. Seven hundred is as many as should be confined in one prison; that is as many as one man can properly care for. A prison

government is a one-man government, or should be so, as to its administration."

MISS DUNLOP says: "Individual study and knowledge by officers absolutely necessary. To this end cultivate the officers. The 'ideal prison officer' must come."

COLONEL BLUNT says: "A—Yes. B—Not to exceed one thousand."

O. C. McCULLOCH, Pastor, Indianapolis, Indiana, says: "Each criminal is an individual. There are no 'criminal classes.' Prisons are too large. There should be district prisons capable of holding two or three hundred."

WILLIAM M. F. ROUND, Secretary National Prison Association, says: "Certainly. I should agree with those penologists who say that there should never be more than five hundred prisoners in a single prison; it is a question if that number is not too large for proper personal supervision."

CHARLES E. FELTON, Superintendent House of Correction, Chicago, replies: "Yes. Prisons should be classified and small. There should be power to transfer from one institution to another, however. In convict prisons an officer *can* know all about the characteristics of a thousand men; but the general officer seldom *does* know much about any one in the prison. Brockway's method of record is a great aid in that direction. But there are very few Brockways."

MAJOR McCLAUGHRY says: "The officer in charge should know and study each prisoner individually, and no single prison should contain more than five hundred prisoners if it can be avoided."

Question No. 11, incarceration, and answers thereto:

11. What action can be taken to make a second (or more) timer in one State the same in all?

F. B. SANBORN, Secretary Board of Health, Lunacy, and Charity, Massachusetts, says: "To unify and harmonize State laws in regard to second and third offenders, is very desirable, so far as it is practicable. How far that may be cannot be known until we try."

SUPERINTENDENT BROCKWAY, Elmira Reformatory, says: "As to the eleventh, I do not know how the system of registers in our country can be made very serviceable. It certainly would be desirable if full information could be afforded to the officers and Courts and prisons of the country as to every man who crosses the Rubicon of crime. It seems to me, however, quite impracticable."

GENERAL BRINKERHOFF, Ohio, says: "In Ohio a person convicted of a third offense, whether committed in Ohio or elsewhere, is adjudged an habitual criminal, and the law requires that he shall be sentenced for life. These men are the leaders, the teachers, the organizers, the captains of crime, and to remove them permanently from society cannot be otherwise than a vast benefit to the State. A voluntary interchange of information between the several States seems to be the only practicable means of securing combined action."

CHARLES E. FELTON, Superintendent House of Correction, Chicago, answers: "None whatever, as no two States will be inclined to adopt the same laws."

REV. A. G. BYERS, Columbus, Ohio, says: "If I apprehend the question, the Ohio law, which upon a third conviction, no matter where convicted, commits the prisoner for life, unless paroled at the discretion of the prison managers. He may be paroled, but it will require other States to adopt like treatment of habitual criminals."

WARDEN M. J. CASSIDY, Philadelphia, says: "The needs and wants of the different States are so various and the habits and customs of the people so unlike, also the climate, causes of crime, and means of repression, so different, that a uniform method of dealing positively with 'repeaters' cannot be had."

COLONEL BLUNT, Military Prison, Kansas, remarks: "None but branding."

MAJOR McCLAUGHRY, Warden, Joliet, Illinois, says: "Exchange of records and photographs between prisons would, I think, tend to bring about that result."

Question No. 12, and answers thereto:

12. What plan of buildings is considered best in prison architecture?

CHARLTON T. LEWIS, of New York Prison Association, says: "The subject of prison architecture will be fully discussed for you by others, so much more skilled in it than I am, that I forbear to write of it. That every prison should be so constructed as to keep the sexes separate, to protect first offenders and tender minds against association in any form with habitual criminals, to secure health, and to afford opportunities for productive labor, are the principles fundamental to the subject, yet are constantly violated. Let these principles be carried out, and county and municipal jails will lose their horrors."

SUPERINTENDENT BROCKWAY, Elmira State Reformatory, says: "As to the plan of building, I consider the cellular system, like the Auburn plan, with a large central building with radiating wings, to be the best plan known to-day."

GENERAL BRINKERHOFF, Ohio, answers: "That depends largely upon the system. For the congregate, or Auburn system, the prisons at Concord, Massachusetts; Providence, Rhode Island, and Allegheny, Pennsylvania, are well planned. For the cellular, or solitary system, the Eastern Pennsylvania prison at Philadelphia, Pennsylvania, is a model. For the reformatory system the prison at Elmira, New York, and that in process of construction at Mansfield, Ohio, are the best in this country."

REV. A. G. BYERS, Secretary Board of Charities, Ohio: "That plan of building which affords an unobstructed view of halls, yard, and shops from the guard-room."

WARDEN CASSIDY, Philadelphia, says: "One-story, large cells, eight by sixteen, twelve feet high."

COLONEL BLUNT, Military Prison, Kansas: "Cell houses and shops radiating from a common center."

CHAS. E. FELTON, Superintendent House of Correction, Chicago, replies: "Depends upon many things; cannot answer."

WM. M. F. ROUND, Secretary National Prison Association, says: "A central building, with radiate wings, was most in favor at the International Prison Congress at Rome."

Answers to question No. 13—incarceration:

13. What system of prison directorate do you approve; and should it devote whole time and be salaried?

CHARLTON T. LEWIS, Chairman of Executive Committee of the New York Prison Association, says in conclusion on this, and in answer to other questions following: "On the question how State

prisons ought to be controlled, I beg to refer you to the provisions of the Constitution of New York, Article V, Section 4, which has now been in force nearly nine years. It vests the entire control of each prison, subject to the laws, in a Superintendent, appointed for five years. The experience of this State is that such centralization of power and of responsibility is essential to success in any prison system. The greatest need of the State in this branch at present is that the control of the county jails and penitentiaries shall also be brought under some vigorous, uniform, and responsible central administration. With these brief suggestions, in which, however inadequately, something will be found relating to each head of your inquiries, accept my earnest wishes that great good to your State may result from your interesting mission to the eastern seaboard."

F. B. SANBORN, Secretary of Board of Health, Lunacy, and Charity, Massachusetts, says: "13. I doubt if State Prison Directors should be salaried, except, perhaps, the Chairman. They should be appointed by the Governor, not elected at the polls, and should hold for long terms, say five years. For women's prisons, some of the Board should be women."

Z. R. BROCKWAY, Superintendent Elmira Reformatory, says: "The English plan of prison directorate I believe to be the best now known in the civilized world. It is centralized, with an executive head."

GENERAL R. BRINKERHOFF, Ohio: "13. A Board of Managers, with not more than one half selected from one political party, appointed by the Governor for five or ten years, but serving without compensation except for actual expenses. Such a Board should have a Secretary, with salary large enough to secure the services of a first class man."

MISS ANNA DUNLOP, Woman's Reformatory, Indianapolis, Indiana, says: "Prison directorate controlling all prisons of State; jails, etc., being also under their supervision. Either all or one member to be salaried, and devote whole time to inspection, etc. No political appointments. The Canadian idea—Prison Inspector—somewhat covers this ground."

REV. A. G. BYERS, Secretary of Ohio Board of Charities, says: "An unpaid directory, five in number, meeting monthly, no one of which number should be a local or resident Director—i. e., live near the institution."

M. J. CASSIDY, Warden, Philadelphia, says: "A Board of Inspectors or Directors, not exceeding five in number, honorable gentlemen, without pay, appointed by the Governor of the State."

COL. A. P. BLUNT, United States Military Prison, Kansas, says: "The necessary time devoted by the Directors or Board, and should be properly compensated."

WILLIAM M. F. ROUND, Secretary National Prison Association, answers: "A strictly non-partisan Board of Prison Directors, not salaried, who elect a Superintendent of Prisons, with whom is lodged supreme power in all the prisons of the State; who is amply salaried, and who appoints all prison officers, the appointments subject to the confirmation of the Directors."

REV. OSCAR C. McCULLOCH, Indianapolis, Indiana, says: "No salaries should be paid but a competent and well salaried Secretary."

CHARLES E. FELTON, Superintendent House of Correction, Chicago, replies: "Sole power should be vested in the Warden, with a super-

visory Board, with power to *correct*, etc. The *prisoner* must know but one head."

MAJOR R. W. McCLAUGHRY, Warden, Joliet, Illinois, answers: "I have had no experience with any system except our own. It works well. The Commissioners (three in number), though salaried, do not devote their whole time to the prison, but exercise such supervisory control as is deemed necessary."

Question 14, under head of "Incarceration," with the answers—

14. How can the evils of county and municipal jails best be remedied?

F. B. SANBORN, Massachusetts, writes: "The evils of county jails can be remedied, in part, by a system of district prisons, to which sentenced offenders should go. These prisons may be called 'work-houses,' or 'penitentiaries'—the latter is their title in New York. We call them 'houses of correction' in Massachusetts."

Z. R. BROCKWAY, Elmira Reformatory, writes: "The best way to remedy the evils of county and municipal jails is to abolish them altogether, substituting district jails, on the Pennsylvania plan, with station houses for temporary detention where required."

WM. M. F. ROUND writes: "By abolishing them all except as houses of detention. Let all those who break State laws be dealt with by the State. There is where the responsibility belongs."

CHAS. E. FELTON, Superintendent House of Correction, Chicago, Illinois, replies: "Construct them for solitary imprisonment, and conduct them on different methods than those now in vogue."

REV. OSCAR C. McCULLOCH, Indianapolis, writes: "They can be improved by the voluntary associations of citizens, that is, if visited by such an association and especially by an association given powers, as in the case of the New York Charities Aid Association. They could suggest improvements, and could bring abuses to the notice of Government and Legislature, and to the public."

MAJOR R. W. McCLAUGHRY, Warden, Joliet, says: "Permit me to refer you to Dr. Wines' book, and Mr. Eugene Smith, of New York, for best answer to this question."

GEN. R. BRINKERHOFF answers: "There is but one certain remedy, and that is the absolute separation of prisoners so that the old scoundrels cannot corrupt the younger inmates, or plot mischief with each other, and all jails should be constructed so as to admit of such separation. In short, jails should be solely places of detention for persons awaiting trial. After conviction felons should be sent to the penitentiary, and minor criminals to district workhouses. There are but two jails in the United States where absolute separation is enforced. One is in Boston, Massachusetts, and the other in Mansfield, Ohio, and the results in both have been admirable."

REV. A. G. BYERS, Columbus, Ohio, says: "By a law requiring all plans of such prisons to be submitted to the Governor of the State for approval."

WARDEN CASSIDY, Philadelphia, writes: "By the absolute separation of the inmates, the keeper of the jail appointed by the Judges of the Court in which district the jail is located and held responsible by the Court for the proper performance of his duties. The officers and the management to be under the supervision of the Court."

COL. A. P. BLUNT, Commandant Military Prison, Kansas, answers: "Adopt the separate system, and give them work."



## Inquiry 15, incarceration, and answers:

Question 15. Is there a point at which a criminal should be declared incorrigible—totally depraved, without hope of reclamation? If so, should he be isolated—put beyond the power of pardon, and the reproduction of his species? And what power should decide, and how carry out?

Z. R. BROCKWAY, Superintendent Elmira Reformatory, answers: "Your fifteenth interrogatory calls for a carefully written essay which I have not now time, if I were able, to prepare. There is a point at which the criminal may be declared incorrigible, in the sense that during the time with the facilities and present knowledge he cannot be cultivated up to the point where he may be allowed unrestrained contact with any community. Instance: criminally insane; feeble-minded criminals; criminals whose physical constitution is so diseased or deteriorated that the physical cannot stand the strain needed to wrest the mental habit from its accustomed channels and inactivity into new avenues and higher engagements. These persons would seem to be better situated in isolation; others of them would get on better with limited supervised association. If you were to ask me at what point it is best for human society to prohibit the reproduction of its species, I fear I would make a sweeping declaration that would astonish you. Therefore I think it better not to say anything on that matter."

WM. M. F. ROUND, Secretary National Board, writes: "I do not see any necessity of declaring any criminal incorrigible, though under the indeterminate sentence many criminals would practically go to prison for life."

GENERAL R. BRINKERHOFF, of the Ohio Board of Charities, says: "No, except for murder in the first degree, after capital punishment has been abolished."

REV. A. G. BYERS, Secretary Ohio Board of Charities, says: "No; no human tribunal may assume any such prerogative. There are hardened natures to which even the law of kindness may seem but an encouragement to wrong-doing, and yet hope should never be discouraged. The only safe tribunal is an intelligent, experienced, discriminating prison official. The first and most important step in any well regulated prison system will provide for the careful and continued custody of depraved and polluted women. Public health, as well as public morals and social advancement, demands a separate prison for females, under the control and management of pure men, and with an Advisory Board of intelligent women."

M. J. CASSIDY, Warden Eastern Pennsylvania Prison, says: "Life sentences should be applied to repeaters of many of the crimes of which crime class people pursue as honest people pursue a legitimate business; the power to inflict such sentence vested in a Court only."

REV. O. C. McCULLOCH, Indianapolis, Indiana, says: "16. I do not think that this can ever be done. But as we would regard a rattlesnake as dangerous, so may we regard a man, and confine him. We have no right to consider him beyond reach of pardon, or to take from him his natural powers."

MAJOR R. W. McCLAUGHEY, Warden, Joliet, writes: "I think there is such a point, and when reached the prisoner should be isolated as above suggested. The Commissioners should decide when that point is reached, subject to the approval of the Executive. The sentence can be carried out as life sentences are now executed."

CHAS. E. FELTON, Superintendent House of Correction, Chicago, replies: "Yes, if he has no reasoning faculties—is an insane man. But, who on earth can decide as to the fact."

## III.—After Stage.

1. Should the State do anything to help worthy discharged convicts into self-sustaining free life; and, if so, what; and how? From even a moneyed standpoint, is it not economy to do so?

To which replies are made as follows:

F. B. SANBORN, Massachusetts, says: "There should be a small fund provided for the aid of discharged convicts, and an agent with the authority of the State behind him to give them employment. To this fund benevolent citizens should also contribute. Well managed, such a fund is an economical arrangement for the State, since it keeps a certain number from returning to prison."

GENERAL SUPERINTENDENT Z. R. BROCKWAY, Elmira, says: "Replying to your single inquiry under the third division, the adoption of the indeterminate sentence with the conditional release seems to meet the requirements of the case."

WM. M. F. ROUND, Secretary National Prison Association, writes: "1. It is necessary, under our present system, to help such discharged convicts as are judged to be worthy. Under a more advanced system of crime treatment there should be no such necessity. The criminal should leave the prison cured of his criminal tendencies—with the ability to earn a living—with a fund saved from surplus earnings. If, under these circumstances, he cannot earn his living, he should be adjudged a member of the incapable class, always tending to become a dangerous class, and taken in hand by the State for further treatment."

GENERAL R. BRINKERHOFF, Ohio, answers: "Most assuredly it should. The post-penitentiary treatment is of equal, and, perhaps, of greater importance than the treatment inside of the penitentiary walls. The main reliance for proper post-penitentiary treatment should be parole discharge, police supervision, and prisoners' aid associations, or State agents with power to aid."

REV. A. G. BYERS, Secretary Ohio Board of Charities, writes: "The State should do everything possible to help *worthy discharged* convicts into self-sustaining life. Every State Prison should employ an agent to seek places of employment, place the discharged prisoner, and aid him and his family (if he has a family) until such time as he may earn an independent support; and this aid should be considered a loan, to be repaid (the principal) as soon as circumstances will allow; the agent to maintain oversight until these results are attained. There can be no question as between helping a man to an honest livelihood, and of leaving him no choice but to resort to crime. It is certainly in the line of public economy to do so."

COL. A. P. BLUNT, Kansas, says: "A—Yes. B—Yes. C—The Board of Directors should decide."

WARDEN M. J. CASSIDY, Philadelphia, says: "By teaching habits of industry while in prison and preventing any association with fellow prisoners, giving each an opportunity of going out into the community unknown as having been in prison, that he may become lost in the great mass of people. He should be given the opportunity while in prison of earning by his own industry sufficient money to



keep him for awhile after his release, making him independent of charitable aid."

CHARLES E. FELTON, Superintendent House of Correction, Chicago, replies: "Yes. The transition is a great one, and the State should devise a method."

REV. O. C. McCULLOCH, Indianapolis, Indiana, says: "I have known convicts sent out with a little money, but who have not known what to do. Still this is the duty of organizations, and not of the State."

MAJOR McCLAUGHRY, Warden, Joliet, Illinois, writes: "It is clearly, in my judgment, the duty of and an economical measure of the State to aid worthy ex-convicts to regain their footing in society. Whether it is best to do this through a State agent or an association, by securing employment for them, supplemented by pecuniary assistance, such as purchase of tools, clothing, etc., or by furnishing them employment for a time in establishments supported by the State aid, as is done in some parts of England, I am not able to say."

*IV.—General to all.*

1. Should all the institutions of the State be unified under one common head?

F. B. SANBORN, Secretary Board of Charities, Massachusetts, writes: "All prisons of the higher grades, and all State reformatories, should be brought under one general system. The minor prisons may be connected with the system, but should be under local management. I think this the only practicable arrangement in a large State, because I do not think all the minor prisons can be conveniently managed in their finances, etc., by a State Board. They can, however, be under supervision, and their inmates might be transferred for purposes of classification from one prison to another, as is done in Massachusetts. I think you are familiar with our system in this respect, and therefore I will not lengthen this letter by explaining it."

Z. R. BROCKWAY, General Superintendent Elmira Reformatory, says: "I certainly believe that all the criminal institutions of the State should be under one common head or governing authority."

WM. M. F. ROUND, New York, answers: "Centralization by all means, and to the last degree. Reduce the responsibility to such an affair that it can be put on one man's shoulders. England has proved the wisdom of this."

GENERAL R. BRINKERHOFF, Ohio, writes: "Unification, under a single head, for general direction, and local Boards for the details of administration, I am inclined to think is the best plan to adopt. Unification in England, upon the whole, seems to have been beneficial. In this country it has not yet passed the experimental stage, but in New York, thus far, it seems to work very well."

REV. O. C. McCULLOCH, Indianapolis, says: "1. I doubt whether this could be done. Institutions may be classified into charitable and correctional, and for these two, I favor Boards similar to Boards of State Charities."

M. J. CASSIDY, Warden, Philadelphia, says: "All the institutions of the State should be under the supervision of a Board of Charities appointed by the Governor, who, by virtue of his office, is the head of all matters pertaining to the State."

REV. A. J. BYERS, Secretary Board of Charities, Ohio, says: "No; all the prisoners of a State might be so unified, and possibly with

advantage, if a thorough prison system from lockup to State Prison can be adopted."

R. W. McCLAUGHRY answers: "I think not. I think the penal and reformatory institutions should form a group under one common supervisory authority, the charitable institutions under another."

General to all:

2. What are the most effective steps that can be taken to render prison management entirely non-partisan?

Please make any other suggestions not covered by the above questions.

W. C. HENDRICKS,  
President Penological Commission, California.

F. SANBORN, Massachusetts, answers: "Non-partisan prison management can be secured only gradually and after a long struggle, except in States where one political party is steadily in control. The principles of civil service reform will lead to this non-partisan control as soon as anything can."

WM. M. F. ROUND, Secretary National Prison Association, writes: "Educate the people to the dangers arising from partisan management of prisons. There can be no good management of prisons when the responsibility rests with a single party, or, as oftener the case, with the fraction of a party. The danger from the criminal class is to the whole public, and the whole public must delegate the authority and responsibility to its own servants."

GENERAL R. BRINKERHOFF, Ohio Board of Charities, answers: "A civil service system, with probationary tests, followed by permanence of official tenure, during good behavior, I think the best, but appointing Boards equally divided between political parties, or equal division of the offices (as in Indiana), will secure good results."

REV. OSCAR C. McCULLOCH, Indianapolis, Indiana, says: "Public opinion, State civil service associations, Boards of State Charities and State Reform."

MICHAEL J. CASSIDY, Warden Eastern Pennsylvania Prison, writes: "By the appointment of gentlemen as Inspectors or Directors who would not carry politics into their private business or allow it to interfere with their relations to society; there are many such in every community. Politics should in no way enter into any part of a prison management or direction."

COL. A. P. BLUNT, Commandant United States Military Prison, Kansas, says: "Make the tenure of office for life, or during good behavior, if found naturally adapted to the work."

REV. A. G. BYERS, Secretary Board Charities, Ohio, writes: "The civil service laws of New York and Massachusetts, are practicable and tend directly to the elimination of partisan politics. I think your questions fully cover the ground, so far as prisons, their organization and management is concerned, but would suggest as a coordinate branch of the prison system of any State, that the police of the State should be under the authority of the Chief Executive of the State, the Governor being Chief of Police just as in the State Government he is Commander-in-Chief of the military force of the State."

MAJOR R. W. McCLAUGHRY, Warden, Joliet, Illinois, writes: "Divorce your police and repressive systems entirely from politics, and govern your penal and reformatory institutions by 'mixed' Boards or Commissions."

To the last two questions, the following replies are made:

GENERAL TO ALL.—First—Yes. Second—Select officers who are so efficient that the politicians dare not discharge them. Efficient officers don't meddle much with politics (nor yet with religion!), *but*, a good officer is all the better for *being* religious.

Very truly yours,

CHAS. E. FELTON,  
Superintendent House of Correction, Chicago.

The following were the questions asked in Form 2, and their answers:

To ———

In the interest of prison management for California, and in behalf of the Penological Commission of that State, the following questions have been formulated and propounded to you as a practical prison officer. In answering, please sign in your present or former official capacity:

Question 1. How should the officers and attachés of a prison, other than the Warden, be appointed?

To which I have the following answers; from—

WARDEN ISAAC G. PEETREY, Columbus, Ohio: "By the Warden, subject to confirmation by the Board."

REV. A. G. BYERS, Secretary Board of Charities, Ohio: "By the Warden."

COLONEL A. P. BLUNT, Military Prison, Kansas: "By the Warden, always."

GENERAL S. E. CHAMBERLAIN, Warden Connecticut Penitentiary: "By the Warden, by all means."

WARDEN M. J. CASSIDY, Philadelphia: "All subordinate officers should be employed by the Warden, subject to his direction only, and removed or discharged by him for cause, and he be the judge of the sufficiency of the cause."

CHARLES E. FELTON, Superintendent House of Correction, Chicago: "First—All subordinate officers and employés should be appointed by the Warden, subject to removal, for cause, by the Board of Managers."

MAJOR R. W. McCLAUGHRY, Warden, Joliet, Illinois: "I think the Illinois system the best. The Warden, Chaplain, and Physician are appointed by the Board of Commissioners. The appointment of Deputy Warden, Clerk, and Steward (purchasing agent) are made by the Warden, and confirmed by the Board. The Warden appoints all other officers and attachés, and can remove all officers and employés except Chaplain and Physician."

REV. FRED. H. WINES, Secretary Board of Charities, Illinois: "The general principle, which should govern appointments in all institutions, is that the executive officer in charge cannot be held accountable for results unless he has full power. His control of employés will not be what it should be, unless they feel that they owe their appointments to him, and that he can at any moment discharge them, if they fail to carry out his orders. The Directors cannot act as officers in immediate charge of a prison, and the more they assume of the powers which properly belong to the Warden, the less efficient the management will be. Their peculiar function is to observe him and see that he is competent and trustworthy. The appointments made by Directors are apt to be political in their character, and the

introduction of politics into prison management is the curse of our American prison system."

WARDEN JOHN W. HORN, Maryland Penitentiary: "It makes very little difference how he may be appointed, provided he does not depend upon politics for holding the position, and thereby made liable to be removed by change of administration. A fully competent Warden should not be removed from any such cause."

Question 2. Should the Physician and Chaplain be entirely subordinate to the Warden, and subject to his arbitrary discharge, or more or less independent of him?

To which I have the following answers:

From ISAAC G. PEETREY, Warden, Penitentiary, Columbus, Ohio: "They should; subject to suspension, awaiting action by the Board."

REV. A. G. BYERS, Secretary Board of Charities, Ohio: "All officers should be subordinate to the Warden, subject to his discharge for cause, with right of appeal to the Board of Directors."

COLONEL A. P. BLUNT, Commandant at Military Prison, Kansas: "This question is somewhat ambiguous. The Physician and Chaplain should have charge, each of his specific department, but always subject to the general control of the Warden, and always in harmony with the general regulations governing the prison. The Warden should have the right to remove *for cause*."

GENERAL S. E. CHAMBERLAIN, Warden Connecticut Penitentiary, writes: "Independent of the Warden, but subject to prison discipline."

MICHAEL J. CASSIDY, Warden Philadelphia Penitentiary: "The staff officers, Physician, Clerk, Chaplain, or Moral Instructor should be independent of the Warden as to their appointment or removal, but in all respects they should recognize the Warden as chief of the whole."

CHAS. E. FELTON, Superintendent House of Correction, Chicago: "Physician and Chaplain should not be appointed by the Warden; nor be subject to his arbitrary discharge, but their duties, as defined by the rules, should make them subordinate to the Warden in very limited extent. For incapacity, neglect, or other good cause, upon his recommendation, the managers should make change. Usually, men who are lacking in ability are selected for those positions. There are questions often arising, however, which only a Board of Managers should settle."

MAJOR R. W. McCLAUGHRY, Warden, Joliet, Illinois: "No. They should be expected to obey the general orders of the Warden, and should be subject to suspension by him in cases of emergency, until the next meeting of the Board. (Our Board meets monthly.)"

JNO. W. HORN, Warden, Maryland: "Entirely subordinate except in their particular departments, the duties of which should be clearly defined, which should govern the actions of the Warden as well as the two officers named. They should not be discharged by the Warden. He should have the power to suspend them, and if found guilty of any neglect of duty they should be removed by the Board of Prison Commissioners, Governor, or some power having authority, other than the Warden."

Question 3. Should prisoners be treated as humanely as possible consistent with safety and discipline, or their treatment made strict and severe?

To which I have the following answers:

From ISAAC G. PEETREY, Warden Ohio Penitentiary: "Strict discipline with humane treatment. Your question implies that if humane treatment is used it is at the expense of discipline."

REV. A. G. BYERS, Secretary Ohio Board of Charities: "No law of humanity should ever be violated in the treatment of men, undergoing discipline for violation of human laws. Kindness is the utmost severity; both heart and will are subject to its power, when properly or prudently exercised."

COL. A. P. BLUNT, Commandant Military Prison, Kansas: "As humanely as possible."

GENERAL S. E. CHAMBERLAIN, Warden Connecticut Penitentiary: "Humanely as possible, but no luxuries."

M. J. CASSIDY, Warden Pennsylvania Penitentiary at Philadelphia: "Prisoners should be treated fairly, as men would be treated in any of the businesses of life, and their individual characters considered in order to treat the malady with which they are afflicted."

CHAS. E. FELTON, Superintendent Chicago House of Correction: "The discipline of a prison should be rigid, so to speak, and still prisoners should be treated humanely. Laxity of enforcement of the requirements of rules is not necessarily treating humanely. Whatever the system is, there should be full compliance, and instantaneous, on the part of inmates; but officers should so enforce rules as not to create frictions, if possible."

MAJOR R. W. McCLAGHRY, Warden Joliet Prison, Illinois: "I think it is entirely 'consistent with safety and discipline' to treat prisoners, at all times, humanely. Humane treatment is also consistent with strict and even severe discipline, provided it be administered without cruelty or brutality. Thus qualified, I deem rigid discipline the most humane."

REV. FRED. H. WINES, Secretary Board of Charities, Illinois: "Prisoners should always be treated as humanely as possible, consistent with safety and discipline, provided that it is not meant by this that they should be pampered or made to feel that crime is profitable as a means of obtaining employment and physical comfort."

JOHN W. HORN, Warden Maryland Penitentiary: "Humanity should always be considered in the management not only of human beings, but of every order of animals. Discipline should be firm, steady, and mild. No human being was ever made better by cruel treatment."

Question 4. Should prisoners, under proper restrictions, have the privilege of appeal from the officer in charge to the Warden, and from the Warden to the Directors, or of writing the Governor without official surveillance? What would be the effect on discipline of their knowing that there was such an appeal to a power behind their officers?

ISAAC G. PEETREY, Warden Ohio Penitentiary: "Yes, sir; except writing to the Governor without official surveillance. Our prisoners understand they can appeal to the Warden at all times, and personally or by writing make known their grievance to the Board."

REV. A. G. BYERS, Secretary Board of Charities, Ohio: "Prisoners should have the right of appeal to the highest authority in the prison management. The effect of such right of appeal is entirely dependent upon the character of the officers of the prison. If proper persons are employed, the appeal will very seldom be made, and, when made, will have the acquiescence of the officer, and thereby promote the discipline of the prison."

COL. A. P. BLUNT, Commandant Military Prison, Kansas: "To the first clause of the sentence, yes. To remainder of sentence, no. The effect on discipline would be very subversive."

GENERAL S. E. CHAMBERLAIN, Warden Connecticut Penitentiary: "First—They should have the right to appeal. Second—It would depend on the ideas of discipline entertained by the Directors."

M. J. CASSIDY, Warden Pennsylvania Penitentiary at Philadelphia: "Prisoners individually should have the right to appeal from the treatment of an overseer or keeper to the Warden, and it should be the overseer's imperative duty to report to the Warden any case of a prisoner desiring an interview. The prisoner also should have the privilege of appealing his case to an Inspector or Director of the prison, but to no authority outside of the prison management; nor should any communication be allowed to pass out or in not subject to the approval of the Warden or by his authority."

CHARLES E. FELTON, Superintendent House of Correction, Chicago: "Fourth—Prisoners should have the privilege of appeal to the Warden; in fact, they should be permitted, as individuals, to see and talk with him as to their own conduct or interests at any reasonable time. Subordinate prison officers are often in the wrong. The fact that they are generally the complainants is sufficient reason why they should not constitute the Court and the executioner. The Warden should have an evenly balanced mind; should weigh evidence and determine facts, and give directions as to punishments. And his dictum should be without appeal. The effect of the liberty to appeal to a higher power, or of making complaint in writing to Boards above the Warden, or to the Governor, is shown best in Massachusetts prisons. You do not need to make the experiment. The supposition is that the higher power—the Board of Inspectors or the Governor—has appointed an efficient Warden. It is an easy matter to determine as to his success without inviting as an irritant the opinion of the prisoners or officers under him. If his success is not satisfactory, he should be retired early, but not through the *direction*, by proxy, of the prisoners themselves."

MAJOR R. W. McCLAGHRY, Warden Joliet Penitentiary, Illinois: "They have the right of appeal in this prison, clear up to the Governor, save that all letters addressed to the Governor must pass through the Warden's hands. The system works well here."

REV. FRED. H. WINES, Secretary Board of Charities, Illinois: "I see no objection to allowing prisoners the privilege of appeal from what they may regard as injustice to a higher power, but many advantages in this course, which is adopted in some prisons. The appeal should be by a sealed communication, not read by the person appealed from, and opportunity for such communications should be given to every prisoner."

JOHN W. HORN, Warden Maryland Penitentiary: "The right of appeal should be denied no one, whether in prison or out of it. From the officer to the Warden, and from the Warden to the Directors, beyond which, in my opinion, it should not go. The cause of complaint should be unsealed, placed in the hand of the officer, indorsed by him, and placed before the Warden, who should see it laid before the Directors. Any failure to forward a respectful appeal should result in the removal of the officer, from the Warden down. It is to be presumed, however, that the Directors would exercise due care not

to censure any officer unless the offense was one of moment, as that would result in the destruction of all discipline."

Question 5. What form of punishment do you approve of in enforcing prison rules?

To which the following answers are made:

ISAAC G. PEETREY, Warden Ohio Penitentiary: "Deprive the offender of his writing permit, his ration of tobacco, receiving visits from his friends, loss of grade, and lash, either Warden Brush's slide or water from the hose."

REV. A. G. BYERS, Secretary Board of Charities, Ohio: "None; that is, no positive infliction of pain; simply deprivation of privileges, to the extent of starvation, if necessary; but let it be kindly, while resolutely enforced."

COL. A. P. BLUNT, Commandant Military Prison, Kansas: "Any kind, excepting corporal."

GENERAL S. E. CHAMBERLAIN, Warden Connecticut Penitentiary: "Solitary, and withdrawal of privileges."

M. J. CASSIDY, Warden Eastern Pennsylvania Penitentiary, Philadelphia: "The withholding of some or all privileges, as the nature of the offense and the character of the individual would justify."

CHARLES E. FELTON, Superintendent House of Correction, Chicago: "That question is too large an one for less than a long paper. Everything depends upon the *kind* of an institution, and the prisoners in it. *Generally*, not by the infliction of physical pain, but by the suspension of privileges, loss of 'good time,' or marks, etc. *Occasionally*, by the infliction of physical pain, however. As to the *kind* of punishment—means of inflicting physical pain—much depends upon the part of the country the institution is located in, and the nationality or race of inmates. Flogging is abhorrent to the average northern mind. In the South, otherwise. Upon an Anglo-Saxon it creates hatred, and is not wholesome in its effects. Upon the African, or the low-down white of the South, and upon vicious boys, it may be extremely deterrent, to say the least. It is said that the Chinaman does not like to lose his 'cue.' We have not tried that. It may be a good way of solving a portion of the Chinese question, so far as relates to prison management. But any method of enforcing discipline by the infliction of physical pain is necessarily faulty, and *to be avoided* if possible."

MAJOR R. W. McCLAUGHRY, Warden, Joliet, Illinois: "Solitary confinement in a lighted cell, on reduced rations of bread and water, for aggravated offenses. I require the prisoner, in addition to the above, to stand handcuffed to the grating of his cell door, in a natural position, a number of hours each day, to be determined by his health. This punishment is tiresome and monotonous, but not painful, and gives the best results of any I have ever seen tried."

REV. FRED. H. WINES, Secretary Board of Charities, Illinois: "The less punishment in prison the better. Much punishment argues incompetence in the Warden. My opinions on this subject coincide with those of Warden McClaughry, as expressed by him at the Prison Conference in Detroit."

JOHN W. HORN, Warden Maryland Penitentiary: "In this prison we use the lash, dark cell, and prohibit writing to or receiving visits from friends. I am opposed to the lash or any other system degrading in its nature. I have found the cells to be sufficient for conquer-

ing the worst cases we have, and as its duration depends upon the party punished, it becomes mostly self-imposed. The only thing that can be urged against it is that the State loses the labor of the man, which is not a valid objection."

6. What form of religious observances should be enforced?

To which the following answers are made:

ISAAC G. PEETREY, Warden Ohio Penitentiary: "All should attend divine service on Sabbath. I admire our plan of having no Chaplain, but have ministers invited from different parts of the State to fill the pulpit."

REV. A. G. BYERS, Secretary Board of Charities, Ohio: "None. Let there be the usual Sabbath religious observances in simple form and catholic spirit, but force no man to attend such service."

COLONEL A. P. BLUNT, Commandant Military Prison, Kansas: "Religious observances should be voluntary."

GENERAL S. E. CHAMBERLAIN: "Protestant, enforced; Catholic, optional."

M. J. CASSIDY, Warden Pennsylvania Penitentiary, Philadelphia: "The unadorned Gospel of Christ, without any application of external forms. Any prisoner should have the right to be visited by a clergyman of his own choice at all proper times."

CHARLES E. FELTON, Superintendent House of Correction, Chicago: "Prisoners should attend divine service, if held, regardless of the church holding service. A Chaplain who makes his service exclusively—or rather offensively—sectarian, should be requested to resign. Protestant or Romish prisoners will not hear anything from either which can in the least harm them."

MAJOR R. W. McCLAUGHRY, Warden, Joliet, Illinois: "I would *enforce* no form of religious observance. Attendance upon chapel service, Sunday school, mass, etc., should be voluntary, but such services should be regularly provided for all who wish to attend."

REV. FRED. H. WINES, Secretary Board of Charities: "I approve of the practice pursued in European prisons, of allowing to Catholics, Protestants, and Jews the ministrations of their own religious faith by ordained ministers of each of these three forms of belief. But I would not allow the fact that a prisoner is a member of any particular church or sect to exempt him from the obligation to attend general exercises of a non-sectarian character, in the chapel."

JNO. W. HORN, Warden, Maryland: "Every man, even a convict, should be permitted to worship God according to the dictates of his own conscience (if he has any). We have both Protestant and Catholic worship every Sabbath. If any Jews are in prison they are permitted to see a rabbi. All are required to attend church services every Sabbath by the clergyman, priest, or parson. At these services no creed is ever preached. We have no Chaplain, yet our people are well attended to."

Question 7. To what extent, and how, should schooling and moral instruction be conducted?

To which the following answers are made:

ISAAC G. PEETREY, Warden Ohio Penitentiary: "The illiterate should be taught to read and write, and a library of popular works open to all."

REV. A. G. BYERS, Secretary Board of Charities, Ohio: "To the utmost extent possible, by a regular system of instruction in prison school for the illiterate, and lectures to all on practical morality."

COL. A. P. BLUNT, Commandant Military Prison, Kansas: "Of conducting ordinary business transactions intelligently, of being truthful, virtuous, and honest. The 'how' cannot be stereotyped."

GEN. S. E. CHAMBERLAIN, Warden Connecticut Penitentiary: "To suit the requirements of the convicts."

M. J. CASSIDY, Warden Eastern Penitentiary, Philadelphia, Pennsylvania: "The illiterate should be taught to read and write, and to understand figures. One of the regular officers, a school teacher for the purpose of instructing the illiterate but nothing more. Any further education can be had by study. Facilities for furnishing such books as the prisoner may require, if he is sufficiently industrious to earn money for that purpose, should be given him."

CHAS. E. FELTON, Superintendent House of Correction, Chicago: "In convict prisons, the reformatory agencies should be, first, labor; second conformity to discipline, under the rules, and the rules should cover all matters tending to *elevate* the inmate; third, schooling in ordinary secular branches, and moral teaching, but not necessarily religious instruction. Leave that to the priest, for his Sabbath labors only."

MAJOR R. W. McCLAUGHRY, Warden, Joliet, Illinois: "For lack of experience, I am not prepared to say to what extent they should be conducted, but certainly to a greater extent than now conducted in any penal institution within my knowledge, except, perhaps, the Reformatory at Elmira, New York."

REV. FRED. H. WINES, Secretary Board of Charities, Illinois: "Every prisoner should receive in prison all the education that he will take, and that can be given him, in the time available for this purpose. He should be in school most of the time when not in the shop. Instruction in morals is as essential to the purposes which should be kept in view as secular teaching or labor."

JOHN W. HORN, Warden Maryland Penitentiary: "I do not believe convicts should be sent to a prison university as a punishment for their crimes. Those unable to read might be assisted to do so. They should be instructed in morals."

8. To what extent may the friends and relatives of prisoners be allowed to see them, and what is the effect of ordinary unrestricted visiting?

ISAAC G. PEETREY, Warden Ohio Penitentiary: "We allow prisoners to see friends as often as every thirty days. The effect of visiting is generally good."

REV. A. G. BYERS, Secretary Board of Charities, Ohio: "Ordinarily visiting by friends should not be encouraged, and the same is true of relatives. Discontent, despondency, even despair, may be regarded as effects resulting from ordinary unrestricted visiting."

COL. A. P. BLUNT, Commandant Military Prison, Kansas: "A—Say once a month. B—It is demoralizing."

GEN. S. E. CHAMBERLAIN, Connecticut Penitentiary: "Once in two months is often enough for discipline."

M. J. CASSIDY, Warden Pennsylvania Penitentiary, Philadelphia: "Friends or relatives should be permitted to visit the prisoner at fixed periods designated by the Inspectors. All visitation of prisoners

should be under their control absolutely. Ordinary or unrestricted visiting, other than that authorized by law, should not be permitted under any pretense whatever."

CHARLES E. FELTON, Superintendent House of Correction, Chicago: "Unrestricted visiting is not to be tolerated. Friends and relatives, if of good character, by visitation can assist much in reformation. Let the authorities be quite liberal in granting permits."

MAJOR R. W. McCLAUGHRY, Warden, Joliet, Illinois: "We permit visits once in eight weeks, which I think is often enough, except in special cases, which are disposed of as they arise. Unrestricted visiting cannot but be demoralizing to all concerned. It has never been permitted in this prison."

REV. FRED. H. WINES, Secretary Board of Charities, Illinois: "Ordinary unrestricted visiting of prisoners cannot be permitted without a most deleterious influence upon the discipline. Visits from friends should be regarded as a privilege, the forfeiture of which is one form of mild punishment. As far as possible they should be confined to near relatives, and the number of visits allowed each month should be regulated by rule, always with discretionary power in the Warden to suspend this rule where circumstances are such as to justify the suspension."

JOHN W. HORN, Warden Maryland Penitentiary: "Relatives should be permitted to visit not oftener than once in every month. Friends only, where they have no relatives. Unrestricted visiting I should think very pernicious. Visits should not exceed twenty minutes, and all conversation should be in the presence and hearing of any officer."

9. What is the effect of general newspaper reading?

To which the following answers are made:

ISAAC G. PEETREY, Warden Ohio Penitentiary: "The home paper, published in the county of conviction, has a good effect."

REV. A. G. BYERS, Secretary Board of Charities, Ohio: "The general newspaper reading is of doubtful propriety. A good family or religious paper would not be objectionable; but these are not the kind of papers that prisoners would select."

COL. A. P. BLUNT, Commandant Military Prison, Kansas: "Immoral publications excluded, it is good."

GENERAL S. E. CHAMBERLAIN, Warden Connecticut Penitentiary: "Should not be permitted."

M. J. CASSIDY, Warden Pennsylvania Penitentiary at Philadelphia: "Weekly newspapers and periodicals of moral character (not flash story papers) are of much benefit and no detriment to the discipline or good order of the prison. A good library is the most important element in prison discipline, the withholding the library book is one of the most effective punishments, besides its instructive agency in forming better habits, and greater knowledge of their fellow man, many of their old bad habits leave them by the aid of the prison library."

CHAS. E. FELTON, Superintendent House of Correction, Chicago: "Daily papers are objectionable, newspapers also, literary papers not so. Any reading matter which will improve—elevate—the mind, is to be admitted freely. When of other character it should not be admitted."

MAJOR R. W. McCLAUGHRY, Warden, Joliet, Illinois: "It is good,

if only good newspapers are permitted. Sporting journals, sensational story papers, 'blood and thunder' prints should be rigorously excluded."

REV. FRED. H. WINES, Secretary Board of Charities, Illinois: "I think that the evil effect of general newspaper reading upon prisoners is exaggerated, yet I should exercise a certain surveillance over it, and quarantine certain papers, as well as refuse to allow papers containing objectionable matter to enter the prison."

JOHN W. HORN, Warden Maryland Penitentiary: "Positively bad."

10. Should prisoners be allowed comforts and luxuries from friends?

To which answers are given as follows:

ISAAC G. PEETREY, Warden Ohio Penitentiary: "Yes. If they disobey the rules after receiving them, deprive them of their carpet, easy-chair, or bedspread until such time as they again *earn* the luxury."

REV. A. G. BYERS, Secretary Board of Charities of Ohio: "No."

COLONEL A. P. BLUNT, Commandant Military Prison, Kansas: "Not in the form of edibles."

GENERAL S. E. CHAMBERLAIN, Connecticut Penitentiary: "No."

M. J. CASSIDY, Warden Pennsylvania Prison at Philadelphia: "Nothing should be permitted into the prison from friends of prisoners other than that authorized by law. Positively no luxuries of any sort."

CHAS. E. FELTON, Superintendent House of Correction, Chicago: "No; the authorities should furnish everything consistent with prison life. Favoritism breeds mischief, jealousies; and the admission of luxuries to one creates sensitiveness on the part of all others."

MAJOR R. W. McCCLAUGHRY, Warden, Joliet, Illinois: "Never; except in very exceptional cases. If luxuries are permitted, unless all can share them alike, that sense of impartial treatment, which is the basis of respect for authority among prisoners, will soon be lost."

REV. FRED. H. WINES, Secretary Illinois Board of Charities: "I would discourage in every practicable way the sending of luxuries to prisoners by their friends, and would make their delivery to the prisoner depend on his conduct and my own judgment as to the good or evil effect upon him personally."

JOHN W. HORN, Warden Maryland Penitentiary: "Never, if I might except Christmas; but surely not more than once a year."

Question 11. What would you name, and how would you arrange and classify, a complete prison system for a State?

To which answers are made as follows:

REV. A. G. BYERS, Secretary State Board of Charities: "Reformatory and Penal System: Under these two forms, classify all the prisons, from the station house and jail—employed as houses of detention, in which *absolute* separation should be maintained—to the district workhouse, for adult misdemeanants; to the industrial or reform school, for juvenile delinquents; to the State reformatory, for first offenders, convicted of felony; to the State prison, as a strictly penal institution. All to be under State control."

COLONEL A. P. BLUNT, Commandant Military Prison, Kansas: "The 'Crofton' system."

M. J. CASSIDY, Warden Pennsylvania Prison at Philadelphia: "State penitentiaries or State prisons."

CHAS. E. FELTON, Superintendent House of Correction, Chicago: "Correctional institutions. A complete prison system would include, the lock-up, or police station, the jail, the reformatory for juveniles, the house of correction, the reformatory for adult first offenders, and the convict prison for the confirmed crime class."

MAJOR R. W. McCCLAUGHRY, Warden, Joliet, Illinois: "To properly answer this question would require more time and more ability than the writer is able to bring to the task."

REV. FRED. H. WINES, Secretary Board of Charities, Illinois: "The eleventh question is too extended in its scope for me to attempt to reply to it in this brief way."

JOHN W. HORN, Warden Maryland Penitentiary: "An answer to this would require more space, time, and thought than I can give here."

12. What plan do you approve of for treating the insane, and partially insane, criminals? Would you have an insane department connected with a prison?

To which the following answers are made:

ISAAC G. PEETREY, Warden Ohio Penitentiary: "Am of the opinion that the State should provide strong wards in the insane asylums and transfer all insane, or partially insane, to such asylums for treatment. Would have an insane department for temporary confinement only."

REV. A. G. BYERS, Secretary Ohio Board of Charities: "The larger States should have a State asylum for convicts, as at Auburn, New York. While it is objectionable for many reasons to have an insane department connected with the prison, there is possibly greater objections to placing in an outside asylum for insane."

COL. A. P. BLUNT, Commandant Military Prison, Kansas: "A—Send them to an asylum. B—No."

GEN. S. E. CHAMBERLAIN, Connecticut Penitentiary: "Yes."

M. J. CASSIDY, Warden Penitentiary, Philadelphia, Pennsylvania: "Insane criminals and criminal insane should be treated in the penitentiaries. Persons who commit crime should not be allowed to avoid the penalty under any pretense; this class of criminals can be as well cared for in the prisons as anywhere else, if they have to be restrained. No particular department is required; better not, as many of them can be employed with sane people, which is the best treatment for the insane in or out of prison."

CHAS. E. FELTON, Superintendent House of Correction, Chicago: "Many persons who are insane are convicted of crime without the Courts realizing the fact. As their crimes are committed while insane, and as generally those crimes, or the criminal inclination, is toward offenses against person—brutality, etc.—they should be cared for in an asylum connected with the prison. It is a wise Warden, and a very wise physician, who does not often pronounce as fully accountable those who are ultimately found to be deranged. In no matter connected with prison management should there be more intelligent caution used, and charitably used, than in determining as to the mental accountability of those suspected of being insane."

MAJOR R. W. McCCLAUGHRY, Warden, Joliet, Illinois: "I would

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recommend a prisoners' ward connected with a hospital for the insane where they can have the benefit of the best medical and expert treatment. I would not have it connected with a prison. I have changed my views on this subject after seeing an insane department connected with a prison."

REV. FRED. H. WINES, Secretary Board of Charities, Illinois: "The true ideal for the care of the criminal insane is neither a department of a prison nor of an insane asylum, but a separate institution."

JOHN W. HORN, Warden Maryland Penitentiary: "The State should have an asylum for the insane, to be supported by direct taxation, divided into different departments, one of which should be for insane convicts or criminals. I do not think they should remain in prison."

13. Is it a fact, in prison management, that "*offenses have diminished as penalties have softened?*"

Please make any suggestions occurring to you, without confining yourself to questions, and oblige,

W. C. HENDRICKS.

To which answers are made as follows:

ISAAC G. PEETREY, Warden of Ohio Penitentiary: "Yes. Respectfully submitted with the reminder that our reformatory measures contemplate *rewards* rather than *punishments*."

REV. A. G. BYERS, Secretary of the Ohio Board of Charities: "*It is a fact* thoroughly attested to my experience and observation."

COLONEL A. P. BLUNT, Commandant Military Prison, Kansas: "Yes."

GENERAL S. E. CHAMBERLAIN, Warden Connecticut Penitentiary: "All depends on the Warden."

M. J. CASSIDY, Warden Eastern Pennsylvania Penitentiary, Philadelphia: "It is a fact that if you reduce the number of offenses you will have fewer penalties to inflict. Many laws are made that are not enforced, also many needless laws to which penalties are attached for the violation of them. The fewer rules to govern prisoners the better, and only such rules as can positively be enforced. Prison officers should be under training and discipline daily in a training school for officers. The selection of prison officers is a matter of much importance to the success of the management. All the officers should be instructed by the Warden; to him they are responsible, and by his direction all of their various duties should be performed. All employes should be selected from a belief in their fitness and capacity for the duties required of them, first commencing at the lowest grade in the service, subject to promotion if efficiency and fidelity justifies it."

CHAS. E. FELTON, Superintendent House of Correction, Chicago: "Offenses have not diminished. At present there is great laxity in the administration of the law. Crime has decreased in England and some other countries, but prison statistics in this country bear witness that the vicious and criminal classes of those countries have made change of residence, largely—have come to our country rather than live in prison at home."

MAJOR R. W. McCLAUGHRY, Warden, Joliet, Illinois: "I think it is. The severity of punishment may be mitigated in proportion as its certainty is assured."

REV. FRED. H. WINES, Secretary Board of Charities, Illinois: "I have no doubt whatever that prison offenses diminish in proportion to the degree of confidence felt by the prisoners in the fairness and

kindness of the administration, where it is not marked by weakness or vacillation."

JOHN W. HORN, Warden Maryland Penitentiary: "I do not think severe punishment as effective as the certainty that punishment will follow any violation of the law. A first conviction should be made light, a second severe, and a third should be very long, if not for life, as I think they are almost, if not quite, beyond a reformation."

## CONCLUDING SUMMARY.

All persons by nature are criminally inclined.

As a rule, all have reproving consciences and reforming instincts. Some by birth and environments seem to be totally depraved, or through habits of offending have become hopelessly incorrigible.

Human nature, with all its instincts and promptings, is found in the prison with the convict the same as with him in freedom.

In prison laws and management, apply natural treatment in harmony with natural laws.

Proper preventive measures will fit any system of prison management.

The common school curriculum should be remodeled so as to make the schools great crime-preventive institutions.

Convicts should be sent to prison as patients to an asylum or a hospital—to be kept until cured.

The non-criminal prisoner and the one whose intentions are good should be helped to freedom and restored to citizenship whenever probable results will justify.

No incorrigible criminal should be set free to again raid upon society, but through a power selected for that purpose should be isolated with him kind forever.

Reformation and protection to society is the object of incarceration, not punishment.

Punishment should be incidental, not vindictive.

Judges cannot tell the day of reformation, and should not fix the time of release for the unreformed criminal.

Judges should be required to send up with the commitment all that is known (or that can be found out about the prisoner between commitment and sentence), for the benefit of the prison authorities.

The spoils of political offices may belong to the partisan victors; but prison management, to be successful, must be on a plane above party.

The State having disgraced the prisoner, should help reinstate him, and endeavor to preserve the worthy discharged convict in self-sustaining citizenship.

All the penal institutions of the State should be unified under one common head and brought under the same system.

An indeterminate sentence is the missing link in prison reform.

Through such a law our prisons can be largely depopulated, by freeing the deserving, and holding perpetually the incorrigible in quarters especially provided for them. This can be done at less expense and with more security, and by thus preventing the reproduction of their species, close out the criminal stock.

Most respectfully submitted.

W. C. HENDRICKS.

## APPENDIX "A."

## CAN WE SAVE THE BOYS.\*

By J. D. SCOULLER, M.D., Superintendent State Reform Schools, Pontiac, Illinois.

Men and women who never have had any boys can always best tell how to save them. I have some of my own, and a great many belonging to other people, and, therefore, should know very little about the subject. The plan was once tried of having men "ready made," without the boys. The man was such a failure that the experiment has never been repeated. Men are only overgrown boys, some of them hardly that. There are three classes about whom we naturally ask, "Can we save the boys?" The first class will be saved without much trouble or trying. The second class will be greatly benefited and improved by efforts in their behalf. The third class is *in articulo mortis*, morally dying or dead.

Members of the first class you may have read about in good little books, or, it may be, you may have met them in every-day life, if you have kept your eyes and, more particularly, your ears open. They never gave their mothers a heartache since birth. Their thoughts and feelings and actions seem always modified by a halo of old age. Their whole character is rounded off. No ugly, scraggy scars deface their symmetrical reputation. The mold in which they were cast must have been perfect. They love to read the lives of saints and martyrs; they never smoke cigars, chew tobacco, or drink liquor; never were seen at a horse-race, or playing a game of baseball. Ninety per cent of this class die young. The remaining ten per cent, if they grow to manhood, must be those critical, complaining, inoffensive old bachelors, who "need no repentance."

The second class of boys is what, in æsthetical society, might be called rather fast boys, with too much life, yet good-hearted boys. They will get into a fight now and then, with the result sometimes of a black eye. Some of them will even run off from school to see a horse-trot, or to visit a circus, if they know that Jumbo or Barnum will be on exhibition. They will jump into the river to save a drowning kitten, and yet rob a bird's nest. This is the class whose eyes dance when they read "Jack, the Giant Killer," and wish they had his sword of sharpness, and his cap of knowledge, that they might set free all the beautiful lady captives of all the Bluebeards in the world.

From this class come our best business men, our best teachers, and

\* This paper, although read before the Eleventh National Conference of Charities and Correction, was not written for that occasion. Dr. Scouller, however, consented to its publication at the request of the Conference.

our best preachers. In fact, the stamina, the backbone, the fiber of the world, are in it. The pushing, energetic, "no-such-word-as-fail" men, the man whose pocket is always open, and whose heart is ever softened by suffering, are from this class. Your heroes, who marched with unwavering step up to the loaded cannon's mouth, and died with victory's shout on your battle-fields; the men who, with disease on one hand and death on the other, but with the "good news" in their souls, have pierced the thickets of Africa and climbed Abyssinian mountains, to carry the bread of life to dying men and women, are from this second class.

Sometimes, a few of them drop down into the third class, and get into prison and disrepute. Somebody did not do his duty, or they might, they should have been saved.

Now, we come to the third class; the boys who will make our criminals, who will be our law breakers; the boys who love the world, the flesh, and the devil. A few of them get into the reform school, and the rest are good raw material from which to make politicians and criminal lawyers.

The boys who prowl the streets at midnight, whose hands are too soft for manual labor, who are too young and delicate to work, belong to this class. The streets at midnight and no work will damn the best boy that ever a mother nursed. These boys for whole nights will not be at home. They are very positive that the principal of the public school is not fit to teach; and, as like produces like, the parents generally sympathize with their promising boys. These are boys who only attend Sabbath school about the time of picnics; and then they can attend all in town, if the hours are suitable. Solomon says you may "bray them in a mortar among wheat with a pestle," but you will only damage the wheat. These are the boys who hold truth to be such a precious jewel that they keep it locked up safely at home, and never carry it abroad with them; boys who can, on the street corners, curse and blaspheme their God as early in years as there are letters in their oaths; who can smoke and chew and drink; can push their caps on one side, and leer at passers-by when only children; who pore over those five-cent pollutions called novels; who think that Jack Shepperd, Dick Turpin, Claude Duval, and Jessie James are heroes of heroes. These are the boys who will make the thieves and criminals of society; who will fill our reformatories, our prisons, our jails, and penitentiaries.

We have now diagnosed the three classes. What is the prognosis?

The first class is out of danger. The second class fevered, but with careful nursing should get well. The third class almost past redemption, not very much hope.

Of the first class, we have nothing to say. All is well with them. Of the second class, we say they should be saved. Our Sunday schools, our public libraries, our social gatherings, our sacred songs, our preaching, are for such boys. To save them is the work of noble men and women all over the land. Our churches and Sunday schools should try to bring them in, cry to them to come in, press them in, draw them in by example as well as precept. When they are in, you should teach them that, when they think they are too big for the Sunday school, there is another school a little higher up, the house of God, and, God helping, they should be saved.

You may not be able to make all of them saints, but you can make them honest, law-abiding men. From twenty to thirty per cent of

this class will drop down into the third class. The rest are like clay in the potter's hand: they can be molded into the fashion of men.

This is the class where efforts for their salvation will return a rich harvest in the day when God makes up his jewels.

But we must be honest in our work. It will not do to preach to a boy meekness, and then get angry; or patience, and be petulant; or firmness, and be wavering like the wind; or honesty, and the next day cheat your neighbor in a trade; or faith, and yet take every step by sight alone; or total abstinence, while your breath smells of whisky. You may preach all these virtues and moral excellences to men, but you cannot do it successfully to boys. Their critical side is always uppermost; and their conclusions, drawn from their own premises, are always favorable to their own side of the case, without using the reason of maturer years.

You tell a boy he must walk in such and such a way, his actions must be on the square, if he ever expects to be strong or wise or beautiful. Your lesson is ended, and you forget your own theories; but that boy watches, and sees the first step you take out of the road you pointed out to *him*. Your lesson has lost its power, and the boy has lost for you his respect. Boys are like women—think rapidly, come to conclusions quickly, and generally they are not far from right. Boys demand honest teaching, honest practice, otherwise they would better have none.

So far, I have spoken only of boys who have been blessed with parental care. Many of the Arabs belonging to the community have no such care. They are left to fight the battle of life alone, the world for their step-mother, sorrow their only schoolmaster. It takes far more innate virtue for a boy under such circumstances to grow into an honest, God-fearing man than it does for a boy who is kindly watched and cared for; and, for this very reason, the more loudly comes the Macedonian cry, "Help us! help us!"

"What can I do for you?" a lady once asked a weeping orphan. "O ma'am, you can aye speak a kind word to me; for I have no mother like the rest." If there be no help nor kind words for such boys from good men and women, then may "God hear the voice of the lads," and rouse us to our duty. The saving of such boys is a work, not a myth; a fact, not a theory; a privilege as well as a duty.

Sir Humphry Davy was once asked for a list of his greatest discoveries. He answered, "My greatest discovery was Michael Faraday." He found him, a poor boy, washing bottles in his laboratory. He lifted him up, till he became one of the world's greatest men. The Christian worker who discovers a good mind and soul, though amid poverty and rags, is among the greatest of modern discoveries.

Dr. Guthrie, of Edinburgh, one of the fathers of ragged schools, was once at a meeting where a speaker described Dr. Guthrie's ragged school children as "the scum of the country." When the doctor's turn for speaking came, he seized a sheet of writing paper lying on the table, and, holding it up, said: "This was once the scum of the country—once foul, dirty, wretched rags. In it now, white as the snows of heaven, behold an emblem of the work our ragged schools have achieved." The harvest truly is plenteous, but some of the laborers have lost their reaping-hooks.

We now come to the third class. I have had some little experience with this class; and I am convinced, after no little thought, that the State should demand the guardianship of the children of all parents

who, either from their criminal proclivities or actual transgressions, are unfit to manage their children other than raise them as law-breakers or vagabonds. The State should take them when they are young enough to be susceptible to moral lessons, if there be any moral soil to plant on. A man found sowing thistle seed on another man's farm or scattering firebrands in a city should at once be punished. Yet this nation, founded on democracy, whose very existence depends on the virtue of its members, suffers a criminal class to grow, whose whole aim and object is to undermine the confidence of the community and to weaken the strength of the Commonwealth. The State has a right in self-defense to seek to control and try to subdue all influences tending to weaken its powers; and the State, in trying to save itself, might be the means of saving many boys, who otherwise would go to destruction.

The boys of this third class are not all from the criminal ranks. We find, on examination, that there may be perhaps twenty per cent from respectable and well regulated homes, thirty per cent from the careless, undisciplined, but not necessarily criminal, families, and fifty per cent from the criminal classes of society.

"How are we to save them?" For six thousand years, that interrogation has stood practically unanswered. We can find as many theories from men and books for the social and moral redemption of this class as there are patent medicines for the cure of physical diseases, and experience proves that the one has about as much potency as the other. The criminal bred and born can, in my opinion, be cured only by stopping production. You cannot change a scrub into a shorthorn or a lion into a lamb all at once, even if you take charge of them when young. Non-production is the only radical salvation I know of, both for the criminal and the security of society.

How hard the task is to save such a class!

Yet sometimes from just such families springs a boy or girl who stands out like a beacon light on the dangerous, rugged seashore. The storm has blown over. Still, with steady light they shine, while all around is ruin, wreck, and death.

Save the boys? It is the *men* and *women*, the *fathers* and *mothers* of the land, whom we must save, or separate the boys from such influences.

I hear some one say: "You can change the leopard's spots. Pray for them." Another says, "Preach to them." "Love them," says a third. "Show them they are on the broad road to ruin. Call to them: 'Turn ye! turn ye! why will ye die?' Christ will wash away all your sins, and make you whiter than snow." No person knows better what to do with bad boys than those who never had any experience with such. What wild and mistaken notions some good people have of what they could do with this class of boys!

Dr. K. was visiting our school on a mission to try to do the boys some good. He had visited jails for several years, and talked to the inmates every Sabbath. He was a simple, good-hearted man. He began in a very confidential manner. "Boys, if I could have only seen you, and told you what I am going to tell you to-night, not one of you would have been here." The boys were all attention at once, evidently thinking it was some new dodge to beat the Judge and jury who committed them. Then he began to read, "Come unto me, all ye that labor and are heavy laden, and I"—By this time, you could hear, *soto voce*, "It's a sell," "Tell it to the marines," etc. The doc-

tor might understand the organic stomach; the spiritual organ of digestion in a bad boy he never had dissected. Evidently, he imagined they had never heard that story before.

One of our own Livingston County Sunday School Superintendents, when visiting the school one day, after being through the shops and school-rooms among the boys, says: "Doctor, what these boys need is praying for. You cannot tell me anything about boys. These are no worse than others. I have taught too many Sunday schools not to know boys when I see them." He feels in his pocket for his handkerchief. Gone! "Say, R., did not I put a handkerchief in my pocket before I started for the school?"

"I thought you did; but never mind, here's mine."

"Ah! Oh! I'll bet [Sunday school teachers should never bet] the little devils have stolen it."

A poet has said:

"One man may look into the skies,  
And see ten thousand angels smiling down.  
Another looks, and sees as many demons frown."

A twenty-five cent handkerchief changed the very angelic smiles of these boys to demon frowns in a very short space of time. From very good little boys to very bad little devils (especially by one who knew boys so well), all in the same breath, is what might be called instantaneous *conversion*. The unrighteous might call it *aversion*.

The Sabbath service in a reform school is of great importance. It is often very difficult to find preachers who can combine common sense and theology. Many years ago, a Superintendent of a very large prison informed me that he had thirteen different preachers follow each other in succession on Sabbath day with the prodigal son, evidently impressed with Dr. K.'s idea, that they never had heard it before.

In the State Reform School at Pontiac, Illinois, in the spring of 1881, we had a layman give an excellent talk on the prodigal son; the following Sabbath, ditto by a preacher; and the third Sabbath I trembled with fear lest we, too, were in for an epidemic of prodigal, and I must say the most brilliant man of them all gave us a talk on the prodigal son for forty-five minutes. On the fourth Sabbath, one of my teachers whispered to the minister, as he entered the chapel door, "Talk to us on anything but the prodigal son;" and, but for that warning, we should have had an address on that matchless story. Washington's little hatchet and the prodigal eating husks are the bugbears of reform schools. The boys don't believe the hatchet lie; and some of them think husks are not so bad, if the roasting ears are underneath.

When I was Assistant Superintendent in the St. Louis House of Refuge, we were often visited on Sabbath day by members of the "Praying Band," a company of noble men and women, whose only aim was the good of the community and the glory of God. One of the ladies, named Mrs. R., was very anxious to secure a situation in the Refuge. "If I were an officer," she said, "I could show you a better way to govern these boys, doctor—more Bible and less whip." Ultimately, she was employed as a cook. She gave up her keys—had no use for them—left the pantry unlocked, so that "trusting" the boys would make them honest. She got Bibles, and leave to have family worship in the morning as an experiment. Hams disappeared,

pies took wings and flew away; and I found, on investigation, always during prayers. I told the boys they must give her a chance, she was working for their welfare. I cautioned her to see that the boys did not steal from her. She was very indignant that I should even suspect such a thing.

"Doctor, that is the very way to make boys dishonest. These boys are wonderfully improved. Some of them now are almost under conviction for their sin."

There was soon so much stealing from the pantry that I determined to bring the whole thing to a focus. One morning, with great caution, a position was obtained, commanding a full view of the battlefield. After kneeling in prayer (which was the outpouring of at least one good honest soul), all the boys with one consent and without invitation made for the substantials in the pantry. Everything comes to an end. So did that prayer; but the boys knew the ending, and were leaving the pantry to take their humble position beside their teacher, when an awful statue, with index finger pointing straight toward that pantry door, stopped their further progress. The first boy (colored) who appeared at the door had, in his hurry, put his head into a milk-pan and lapped the milk, as heroes before him did water, and the sight he met deprived him of power to wipe away the evidence. Another behind him had pockets full of doughnuts; some had one thing, some another. Eight boys trying to get through a two-foot-ten door, with a horrible ogre in plain sight ten feet away. It must have been only fancy, but, if the colored boy was not white for a few moments, then he never will be. When the prayer was ended, and Mrs. R. rose to her feet, the scene was worthy the pencil of a Hogarth. She then learned more of human nature in ten seconds than in the previous forty-five years of her life. Not one word was spoken. The next time I saw her, she was engaged in breaking off branches from a peach tree for some purpose.

"Well, Mrs. R., how do you get along with the boys now?"

"Pretty well, doctor, pretty well. I think I'll manage them as long as the peach tree lasts."

I used to call it Mrs. R.'s conversion from *Bible* to *peach tree* salvation. There is one thing I have found out, and that is, that between the Bible and the *peach tree* there is a great gap, which ought to be filled with common sense.

At a convention of ministers in our city, seventeen of them came to the school to visit us. We assembled in chapel, and many of the clergymen were very anxious for an opportunity to speak to the boys. It was finally agreed that each man should not talk over five minutes. Some of them talked very well. One man said he never had had such an opportunity in all his ministry to speak a good word for the Master. Seven of them talked in the same general strain—"You are bought with a price; you do not belong to the State, not even to yourself." The eighth preacher, by his manner of speech and his shade of egotism, was anxious to impress on the boys' minds the full theological significance of the work of redemption. He thought he could make it so very plain that the runner—yea, even the bad boy—could read it in his haste. He would illustrate, a dangerous quagmire to travel through with bad boys. He took out his watch, which, of course, was his own, as he had bought it. What a powerful illustration he could make of that fact!

"Boys, what is this I hold in my hand?"

Chorus: "A watch."

"What is it good for?"

Chorus: "To keep time."

"Now, where do you think I got it?"

Chorus: "Stole it."

That speech was the shortest of all, and also the last. Not another man would speak. You can imagine how much he had improved on the others in his illustration of redemption with a stolen watch. Every one of these teachers was a zealous, earnest worker for the Master. They were "harmless as doves," but not "wise as serpents." They would do for the first or second class, but for the third class of boys they were only beating the wind.

How, then, are they to be saved? It is one of God's modern miracles to save such. God works miracles even in these days. Pearls are very beautiful, but before they are ready for the necklace some one must have gone down into ocean's depths, braving death for the pearl oysters. Then he brings them to the surface, and spreads them out in long troughs in the sun that its warm rays may crack them open; and there, among the slush and decaying matter, he feels carefully for his pearls till he finds them. So is it with this class of humanity. You feel away down in the slums of vice and crime, in the dark prison cell, amid the wrecks of decayed hopes and broken hearts, and sometimes you will find a pearl, a pearl of great price.

Is it worth the work, will it pay for the trouble? asks our pessimistic friend.

The eminent educator, Horace Mann, when delivering an address at the opening of a reformatory institution for boys, remarked that if only one boy was saved from ruin it would pay for all the cost, and care, and labor of establishing such an institution. After the exercises had closed, in private conversation a gentleman rallied Mr. Mann upon his statement, and said to him, "Did you not color that a little when you said that 'all the expense and labor would be repaid if it only saved one boy?'" "No, sir; not if it was my boy," was the solemn and convincing reply. Every one of this class of boys, though in the depths of sin, though seething in guilt and crime, is somebody's boy. Some father called him *my boy*; some mother on bended knees may now be sobbing out her heart's prayer—

"Where is my wandering boy to-night?  
Go search for him where you will,  
But bring him to me with all his blight,  
And tell him I love him still."

The largest portion of this class use stimulants of some kind, though many of the worst and smartest are sober and cautious, their peculiar work requiring a cool head and a steady hand. There are many boys in this class who are not criminals by nature. The habits of society, the companionships they form, or the warped and narrow-minded discipline of the paternal home, may have had much to do with their fall. This portion of the third class, even in their most degraded hours, has yet a small spark of manhood left. Honor and gratitude the hereditary criminal never comprehended. I never yet met a born thief or property criminal who knew the meaning of honor. Their souls are as impermeable to gratitude as the granite slab to the rays of the sun. They are always innocent of the crimes charged against them. The fellow who did the deed generally escapes. They have

always complaints to make—"not used as they should be;" "everybody down on them."

Away up in the Splügen Pass in Switzerland there is a clear crystal stream tumbling down the mountain side. It flows on through the meadows and shady woods; it moves slower and slower, till at last it retains so little of its original force that it has to be pumped into the Northern Sea at Rotterdam. Such is the beautiful Rhine, born on the hilltops among the eagles' nests, yet in old age vigor gone, and without tide-power enough to empty itself into the sea. How often in life have we the same result? Boys start out from Christian homes, from loving fathers and mothers, pure in thought and feeling, as the Rhine water is pure amid the rugged hills of Switzerland. Yet we find them down in this third class, wrecked in their prime on ruin's beach. Down, down, manhood gone, good resolutions gone, their will-power in subjection to the devil. Yet they are somebody's boys and worth saving. I have said that the habits of society, companions, and home discipline were often the causes for their fall. Bad companions and drinking intoxicating drinks, habits formed before maturity, have often laid the way for deeds of crime and blood.

In regard to home discipline and the mistaken notions of good men, I must say, in many cases that I have seen, such discipline has only produced evil. A fine business man in Illinois had a boy in the Reform School. The boy did well, and was granted a ticket of leave, and then pardoned. I visited him, when his father told him, in my presence, that the first slip he made in his conduct, the very first error, he might as well leave the house, he would not tolerate him any longer in his folly. There was to be no baseball, nor circus, nor theater, but Sunday-school and church as often as he liked. Had this been a boy of the first class, or even the second, he might have been all right. He was not, and both the boy's conduct and that of his father were not what they should have been. You cannot make cast-iron rules to govern a family. Temperaments are not all the same, inclinations not all alike. Some of the family may inherit a little of the original savage. What is to be done with such? If you cannot get the boy up to your plane, you must come down to his and help him up to yours. Do not call down from the heights of exalted position, "When I was a boy like you, I never did this or that." Do not overrate your past goodness, and overrate your boy's present badness. That business man in Illinois was as far removed from his son, in feeling and sympathy, as the east is from the west. He wished to make his boy a saint or nothing. He must be a model of goodness, and not like any common boy; otherwise, his father would wash his hands and say, "I am clean of this boy's blood." The *essence* of salvation in a worldly sense is the same, but there is a difference in *degree*. There are many steps in a ladder, so there are many degrees in salvation. In the discipline of families, this fact of degrees in virtue has been overlooked, often to the damage of all concerned. If you can civilize the savage, you do well; but, if you will not civilize him, because you cannot Christianize him, then you do wrong. If you reform a drunkard, and make a sober man of him, and a better member of society, you have done a good work. If you will not do so, unless you can make him join some church, then you are not doing your duty.

Do not expect all your boys to stand on the top step of the ladder. You may find it hard work to get some of them out of the mud on to

the lowest step; better there than in the mire. There are many inside of the church, even teaching others how to walk, whose shoes still show the traces of the clay and struggle to reach even the first round. I passed the store of that man I have mentioned, some time ago; and he did not even answer my nod. Years before, I had told him what I am now telling you—that he could not allay his boy's spirit by curbs and halter. Punishment may maintain a rigid discipline, but punishment *per se* never reformed a man or boy. I advised him to try to be a companion as well as a father; that he might even take his boy to the circus, go out with him when he went to take a walk, rather go with him to some place of amusement than let him go alone, until the Bohemian spirit of the boy was broken into the harness of a quiet life; and that he might at least make his boy a law-abiding member of society, if he was not able to make him a saint. He thought me worse than an infidel, and thinks I am a dangerous man. I told him some men would have to answer for more sins than their own. As I looked at him, in his own imagination on the topmost round of the ladder, tapping at the heavenly gate, I asked the question, Hast thou, my friend, yet taken the first step with the Man of Sorrows—the first step in the path of Him whose feet were washed by a sinner's tears and wiped with the hair of her head—of Him who said, "Go, sin no more?"

"Heaven is not reached by a single bound;  
But we build the ladder by which we rise  
From the lowly earth to the vaulted skies,  
And mount to the summit round by round."

That man's case was not different from many I could mention, perhaps not unlike many that others have seen.

When our boys sink down to eternal ruin, or drink the dregs from the cup of moral death, let us ask our own souls if we have done what we could to set their feet on the "Rock of Ages," where boys and men are safe from the storms of time and eternity.

On that great day when you and I shall stand before the Judge of all the earth, it will not be any excuse to say, I was too busy on my farm, or in my store, I had too much to do on "Board of Trade," or in my counting-house. We can find time and money for our own pursuits, to gratify our own ambition, while some of our boys are on the broad road which leads to eternal death.

It was a beautiful baptismal benediction, that of the Arab priest: "My child, as you came into the world weeping, while all around you smiled, may you so live that you may leave the world smiling, while all around you weep."

If we could only live such lives as this, our boys would be better, the world purer, death serener, and immortality more glorious than ever angel sung.

## APPENDIX "B."

### REPORT OF SPECIAL COMMITTEE TO THE PRISON ASSOCIATION OF NEW YORK ON CONVICT LABOR.

*To the Prison Association of New York:*

The undersigned, appointed a special committee to prepare resolutions on the subject of labor in the State Prisons, present the following report:

The question of the best mode of employing convict labor is undoubtedly the most prominent question of the day, relating to prison management; it is an urgent question, demanding a speedy solution, and one which ought to secure, in our own State at least, some decisive action within the coming year. Whatever legislative measures touching prison labor may be adopted by the State of New York will inevitably exert an important and enduring influence on all the interests of prison reform throughout the United States. There is no subject, therefore, related to the objects for which this association was organized, which exacts from us such immediate and careful attention as the principles which ought to control in the employment of convict labor. There is no direction in which the practical energies of the association can now be more profitably expended than in the effort to secure the adoption in this State of the best attainable system of prison labor.

There are but three available systems of convict labor, known familiarly as the "public account system," the "contract system," and the "piece-price plan." In deciding between these three systems it is necessary, first, to fix the *test* of excellence by the application of which one system can be declared to be better than another.

The test proposed by popular opinion is strictly pecuniary; that system is widely accepted as the best which will yield the largest direct return in money to the treasury of the State. We cannot too earnestly condemn the theory that the immediate financial results shown by a system of convict labor afford a test of the value of that system. The amount of *profit* that the State can possibly realize from prison labor, small at the best, is wholly insignificant when compared with the gain accruing to the State from the *reformation* of its convicts. Looking at the matter from a merely financial point of view, the saving to the community in being freed from the depredations of each convict who has been reformed by his prison discipline will vastly exceed the utmost profit the State could have wrung from the labor of that convict while in prison. On a purely pecuniary basis, then, and, far more widely, on the broadest grounds of public policy, the convict's reformation is more profitable to the State than his prison labor can be.

There is, indeed, no conflict between reformatory discipline and



lucrative prison labor; on the contrary, the best reformatory treatment involves the assiduous industrial employment of convicts. But the latter is always subordinate and subsidiary to the former. Prison labor must be regarded as only the *instrument* of reformation; it is valuable only as it promotes reformation, and the true test of excellence in any system of prison labor is not the amount of money, but the amount and quality of reformatory influence it can be made to yield.

The choice between the three systems of labor, then, is reduced to the inquiry, which one of them can be most efficiently adapted to secure the end of the prisoner's reformation.

It is fundamental to this inquiry to form an exact conception of the meaning of *reformation*, as applied to the convict class. The formulation of the idea will be suggestive of the true methods for its practical realization. The reformation of a criminal does not involve any sentimental or supernatural element; it does not imply any religious transformation; it does not even effect the elevation of the criminal, either mentally or morally, above the level of the natural capacities that were within him before he fell into crime. It is the effect of crime to produce a distorted character; the criminal's view of life and his principles of action are morbid; a vicious career serves to blunt humane instincts, to blind the moral vision, to enervate the will, by giving the baser part of the nature unbridled supremacy. The criminal feels himself at enmity with the community around him, and is out of harmony with the ideas and sentiments that are generally dominant in common life. He is not, therefore, governed by the restraints, the motives, or the incentives that control other men and are sufficiently strong to keep them from falling into crime. It must be the aim of reformatory treatment to awaken in the criminal the hopes and desires, the motives of conduct and the views of life, that actuate ordinary men in the life of the community; to impart to the criminal the same habits of industry and thrift, the same powers of will and of self-command, the same sense of right and justice, the general prevalence of which among men sustains the reign of law and order. In a word, it is the aim of reformation to restore the criminal into the likeness of common men; and when that has been effected so completely that he will lead a law-abiding life through the force of the same habits and motives that govern ordinary men in common life, then the criminal is *reformed*; that which was morbid has become healthy; that which was distorted and abnormal has been made natural and normal.

Industrial labor is not only the most powerful agency of reformation; it is the indispensable instrument, without the aid of which reformatory results (except in sporadic instances) are wholly unattainable. Industry is the essential prerequisite of healthy life and progress in all human society; and to such a degree that any community deprived of productive employment must quickly lapse into moral corruption and decay. There is little moral efficacy, however, in mere labor of itself. An example of this was afforded in the history of the colored race at the South during the reign of slavery; the negroes led a most laborious life, but there is no evidence that their toil produced any effect toward the moral elevation or development of the race. The virtue of labor as a moral agency consists not so much in the toil it requires as in the fruit it yields. Men labor in order that they may enjoy the substantial products of their activity.

Industry is the natural road to honor and success. The sense of self-dependence, the necessity of self-support, the desire of acquisition, these are the normal incentives that inspire human energies; and it is only by means of such incentives that industry serves to develop a high type of manhood.

In order to utilize prison labor as a means of reformation to the convict, it is necessary to excite and call into action the same class of incentives that operate so powerfully on human nature everywhere. This is the natural, and hence the philosophic, method of reformation.

Applying the tests already proposed, we proceed to the separate consideration of each of the three systems of convict labor in succession, believing that the comparison of them will throw a stronger light on their several defects and merits, and give a cumulative support to the conclusion arrived at.

#### THE CONTRACT SYSTEM.

The contract system is essentially unfavorable to reformation, because it fails to appeal to the motives to which alone any reformatory influences of labor must appeal. It regards and treats the convict as a slave, or a live chattel, in the service of the State, and it asserts the right of the State to use the convict, or hire him out to others to be used, as it might do with a horse or an ox, for the profit of the public treasury.

The contract system involves, and, indeed, is based upon, these two propositions: first, that the State is bound to support the convict in prison, and to supply him with all the necessities of life; and, second, that the convict is entitled to no interest in the products of his prison labor, all of which belong to the State. These propositions, which, at the best, express but half-truths, are brought into undue prominence by the contract system, and are obtrusively impressed on the thought and daily life of the convict in a manner that is wholly at variance with all true methods of reformatory treatment. If the convict is taught to regard himself as vested with an absolute right to support from the State, if he is placed in the position of a *pauper*, sustained by public benevolence, it will be found difficult to develop in him a sense of the duty of self-support, or to train him into the habit of self-support. If the convict is treated like a living chattel, to be leased out to the highest bidder, how, in the face of such degradation, can any reformatory precepts be made effectual to awaken in him a sense of his manhood? If he is allowed to reap no personal benefit from the products of his prison labor, how is it possible to create in him habits of thrift and self-dependence, or to arouse in him a sense of the value of labor as the only means of acquiring happiness and success? And, yet, to impart to the convict these habits and sentiments is of the very essence of reformation.

There belongs to each of these propositions, fundamental to the contract system, a correlative proposition, an obverse side, which is ignored by the contract system, but which ought to be primarily impressed on the convict. Whatever obligation may rest on the State to furnish the convict with the necessities of life, it is the imperative duty of the convict, on his part, to make good, so far as he can do by zealous effort, the cost and damage he has brought on the State. If the public owes no man a living, the criminal who has made himself a public enemy has, least of all, a claim on its bounty. If every citizen rests under the duty of self-support, it is impossible to claim that

the convict has earned exemption from that universal obligation by the commission of a crime. The State discharges its full duty to the able-bodied convict when it provides him with the opportunity to work for his living; and, then, the obligation of the convict in prison to earn his own support becomes the same in principle as that resting on every other subject of the State. So with the second proposition, vital to the contract system, that all the product of the prisoner's labor belongs to the State. The convict has inflicted serious injury on the State; his apprehension and trial, his surveillance and imprisonment, as well as the direct damage caused by his crime, have imposed a heavy burden of cost and of loss on the free community—a burden so grievous that the State can only be preserved from extinction by curbing the criminal class and keeping it from ascendancy. The convict's first duty is to relieve the State from the cost of his maintenance, and to this object the fruits of his prison labor are rightfully applicable. The claim of the State to the prisoner's earnings is not an arbitrary appropriation, but the just demand that the prisoner shall defray the charges he has himself incurred. The logical relation, then, of the imprisoned convict to labor is not different from that of every free citizen; both are bound by the duty of self-support, without any rightful claim on the charity of the State, and the product of the labor of both is justly applied to the discharge of that duty.

It is a grave objection to the contract system that it places the convict in a relation to his labor that has no counterpart in common life outside of prison. It prevents labor as part of the convict's punishment, not as a resource bringing him advantage and means of progress.

To utilize the reformatory capabilities of labor, it must be so applied as to create in the convict the *habit* of industry, and, at the same time, a sense of its value to him as the only means by which he can attain to prosperity in his life. Stimulate him by the same kind of wants and desires and incentives that incite free workmen to effort. He needs food and clothing and bedding; the State is not bound to gratuitously supply the sturdy convict with any of these; the State will simply give him an opportunity to earn money by work, and he must win his own support like any honest workman. Give the convict a further interest in the products of his labor; incite him, by the application to his industry of rewards and punishments; make it no less true in prison than it is everywhere else, that faithful effort bears fruit worth striving for, and that idleness and misconduct entail suffering. The prisoner's comfort should thus be made dependent on his own exertions; diligent application to labor should bring, as its reward, some alleviation of the hardships of prison life, and should be the price at which alone the prisoner can acquire such betterment of his physical surroundings, such privileges of intercourse with his friends and of exemption from the most rigorous rules as may be consistent with the ends of prison discipline; and, in the same manner, inattention and indifference to duty, as well as positive wrongdoing, should be followed by the punishment of increased privations and suffering. By such simple and rational methods the convict will be gradually trained into the habit of living and working with reference to the future, and may so form the habits of thought and be brought under the dominion of the motives that characterize the free workman. For the application of the reformatory methods here indicated it is indispensably necessary that all the industry of the

prison should be under the absolute control and administration of the prison authorities. The presence and the interests of a contractor, with his subordinates, are out of harmony with the reformatory influences aimed at, and will be found practically to have tendencies essentially hostile to them.

The natural uses and effects of labor as a means of reformation are incompatible with the inherent principles of the contract system. That system, by depriving the convict of all interest in the fruit of his labor, and by treating him like a living chattel, to be worked or leased for the sole benefit of the State, serves to demoralize and brutalize the convict instead of stimulating him to lead a life of self-support on his discharge from prison; and it trains him to regard labor, not as a means of future advancement and source of hope, but as a degrading and hateful instrument of punishment.

#### THE PUBLIC ACCOUNT SYSTEM.

Of the public account system, we unhesitatingly declare our opinion that it is, theoretically and under certain conditions, the best system of all. Under it, the relation of the State to the convict becomes closely analogous to that of employer to employé; the prisoner's work is conducted under conditions quite similar to those prevailing in any other factory; and by a judicious application of the reformatory methods already indicated, habits can be inculcated and incentives awakened so like those which sustain the free workman, that they will uphold the convict as well, on his release from prison, and will prove the natural preparation for a life of freedom. The public account system has long been exclusively used in England, and is a component part of the plan of prison discipline which has achieved in that country the most wonderful reformatory results.

But while asserting to the fullest extent the inherent merits of this system, there are many reasons for doubt whether the present time is ripe for the absolute adoption of the public account system of labor in the State Prisons of New York. Convict labor for the public account necessitates a large outlay of capital by the State; it has been estimated by competent authorities that the amount of capital so required, as a condition of successful operation, is not less than \$1,000 for each convict at work. Multiplying \$1,000 by the number of convicts in the State Prisons makes a large product; public sentiment would not, we believe, sustain the Legislature in making so large an appropriation for such an object. Indeed, the wisdom of the appropriation, in the existing situation, may well be doubted. The experience of the State of New York in trying the public account system in the past has been discouraging, and even disastrous; that trial was attended with corrupt abuses and the fraudulent squandering of the public moneys, with immense resultant losses to the State. Under our political system, the special expenditure of large sums of the public money seems to be inseparable from abuses. The present Superintendent of State Prisons can be relied upon, indeed, to do all in his power to prevent fraudulent practices. But there is reason to fear, judging from experience, that corrupt political forces would so control and hamper the terms of the appropriation, or the conditions of its expenditure, that the large outlay required could not be actually made without public loss and scandal. If the public account system is to be again tested in this State it should at least be intro-

duced by degrees and tentatively, and not by any wholesale appropriation of public money.

A practical difficulty in the public account system, and one deserving serious consideration, is the heavy burden it imposes on the Warden. The internal management of the prison, with its industries, and the discipline and training of the convicts, demand all the Warden's energies. But if the prison is to be handled as a manufacturing enterprise, and the Warden is to assume the control and responsibility of a vast moneyed capital, his time and abilities must be largely devoted to commercial details; he must be thoroughly familiar with the state of the market, and the course of its fluctuations; he must be sagacious in the purchase of raw materials and in the sale of his manufactured products; he must, in a word, practice the same activity and shrewdness that are demanded from the financial manager of any large factory employing from five hundred to one thousand workmen, or else the enterprise, as a business, must end in disaster. These financial duties, if efficiently met, would be arduous enough to engross all the Warden's time and ability; to discharge them properly, and at the same time to conduct faithfully the disciplinary management and individual treatment of a thousand, or of half a thousand, convicts, would require in the Warden a very rare combination of extraordinary gifts.

In England this difficulty is obviated by circumstances incident to the political organization of that kingdom. The convict prisons being all under the control of the central government, the convicts are employed for the most part on public works and in the manufacture of supplies for government use; the Governors of the prisons are thus relieved from the necessity of cultivating a market outside for their manufactured goods. In this country the Federal Government has no convict prisons, and the separate States, which control the prisons, have few public works and need few public supplies in the manufacture of which it would be practicable to employ convict labor. But wherever it is feasible to use the labor of convicts in prison upon work for the State, it is the most natural and useful employment possible for prison labor. There are some directions in which convict labor is capable of being thus utilized for the State account; there is no reason why the public printing, for instance, should not be done in the State Prisons, nor why many of the supplies required for institutions supported by the State should not be manufactured by convict labor. It is in the highest degree desirable that such channels should be widened, to the end that State Prison labor may be employed as largely as possible upon public work for the use of the State. Prison labor so employed upon the public account system seems to your committee to be, both theoretically and practically, the best conceivable form of convict labor.

After the utmost effort, however, in the direction indicated, it is probable that employment on public work could be supplied for only a small fraction of State convicts. The great majority of them will have to be engaged, from the necessities of the case, in the manufacture of merchandise for the general market, and for such industries the public account system is open to the objections and subject to the drawbacks already mentioned. For the labor of such convicts as cannot be employed on State supplies, your committee believe that the piece-price plan has some practical advantages over both the other systems, which ought to secure its adoption.

#### THE PIECE-PRICE PLAN.

The essential character of the piece-price plan has been quite generally misapprehended. It has been represented as a mere modification of the convict system, while it really resembles much more closely the public account system. It differs from the public account system in two particulars, neither of which has any perceptible bearing on the interests of reformation: First—Under the public account system the goods are first manufactured by the prison and then sold to the dealer; under the piece-price plan the goods are sold by the prison to the dealer in advance, and then manufactured as under a special order. Second—Under the public account system the plant of machinery belongs to the State, and the raw material belongs to the State; under the piece-price plan the plant may either belong to the State or be hired from the dealer, but the raw material, instead of being bought by the State, is advanced by the dealer to be worked up by the prison in fulfillment of his advance order. In both these particulars the piece-price plan brings to the State the advantages of requiring a small capital, and of throwing upon the dealer the financial risk of an adverse change in the market. The public account system and the piece-price plan are alike, and both differ from the contract system in the one radical feature, that the labor of the convict is under the absolute and undivided control of the prison authorities; and this feature is vital to the requirements of reformation.

The labor of a prison needs to be apportioned with intelligent reference to the diverse capacities of the prisoners. One prisoner may display a special aptitude for a certain kind of work; another, by reason of physical or mental peculiarities, may be wholly unfitted for certain industries; one prisoner, exceptionally strong and agile, may be able to perform in a few hours an amount of work which another prisoner, constitutionally weak or inert, cannot accomplish in a day. The individual capabilities of the prisoners must be observed in the allotments of labor, or else it will be hopeless to look for reformatory results. For this reason, the presence of a contractor with his agents and overseers is necessarily opposed to the interests of reformation; it reduces all the prisoners to one level of uniformity, without regard to their constitutional differences; it brings in the prison a power behind that of the State, which unavoidably interferes to some extent with the discipline of the place, which fixes the stint of a day's work, which prescribes the employment of each prisoner, and which drives all the industries of the prison under the sole impetus of the contractor's pecuniary interest.

The piece-price plan excludes from the prison every foreign element; it makes all the instructors and overseers prison officers in the employment of the State; and it gives to the Warden supreme control over the labor of the convicts, with unlimited power in the individual allotment and adjustment of that labor. All the intelligent methods of prison discipline which have been approved by scientific tests, are readily adaptable under the piece-price plan. Every reformatory measure and influence that can be applied under the public account system can be applied and rendered equally effective under the piece-price plan; and for the simple reason, that under both systems alike, the labor of the prisoners, and all their disciplinary treatment, are committed to the absolute control of the prison authorities, and relieved from all extraneous dictation or counteraction. For reformatory uses, therefore, your committee are unable to perceive any respect

in which the piece-price plan does not possess all the advantages, both theoretically and practically, that belong to the public account system; and there are two important particulars in which the piece-price plan seems to present positive advantages over the public account system.

*First*—It relieves the Warden from the financial burden and responsibility of administering a large public fund; it relieves him, in large measure, from the necessity of maintaining an intimate acquaintance with the conditions of the market, and of opening channels of trade through which he can advantageously dispose of his products; and it leaves him comparatively free to concentrate his energies and efforts upon his proper work of improving the internal discipline and efficiency of the prison regime.

*Second*—It relieves the State from an extensive outlay of capital, which ought always to be deprecated and, if possible, avoided. The public account system places the State in an unnatural position when it makes it a manufacturer and trader as well as a capitalist; the piece-price plan transfers the risk of the manufacturing venture and of the fluctuations of the market from the State to the commercial dealer.

The piece-price plan is no longer an experiment. It has been thoroughly tested in different States, and with results that are wholly satisfactory. At the late meeting of the National Prison Association at Detroit, convincing testimony was given of the practical success which has attended its introduction in Ohio, in Canada, in Massachusetts, in New Jersey, and in the Elmira Reformatory. A decided preference for this plan over the public account and contract systems, both in its reformatory and in its financial results, was freely expressed by intelligent prison officers who had personally administered all the three systems.

We recommend, therefore, for adoption the following resolutions:

*Resolved*, That the highest test of excellence in any system of convict labor is to be found in the adaptability of that system to promote the end of the convict's reformation.

*Resolved*, That the contract system, in principle and in practical methods, is inconsistent with those forms of discipline and treatment that are most conducive to the prisoner's reformation, and should therefore be condemned.

*Resolved*, That the best and most natural method of employing convict labor is in the manufacture of supplies for use in institutions supported by the State, and in such other public work for the use of the State as can be carried on in confinement; and that, so far as such public work can be provided, the State prisoners should be employed on the same under the public account system of labor.

*Resolved*, That all State prisoners for whom such public work as is mentioned in the last preceding resolution cannot be provided, should be employed upon the piece-price plan of labor.

All which is respectfully submitted.

Dated New York, December 17, 1885.

EUGENE SMITH,  
CHARLTON T. LEWIS,  
WM. M. F. ROUND,  
Special Committee.

65 Bible House, New York City.

Adopted by the Prison Association of New York, at a special meeting held December 29, 1885.

THEODORE W. DWIGHT,  
President.

EUGENE SMITH, Recording Secretary.

## APPENDIX "C."

### COUNTY JAILS.

A paper read at the Annual Convention of the National Prison Association at Detroit, Michigan, October 19, 1885, by EUGENE SMITH, of New York City.

I do not know how I can better introduce this subject than by presenting to you a typical case, to illustrate in a concrete way the character and working of our county jail system. The description given will be true in its detail, though imaginary in its personnel, and the story is one of which the counterpart will be found far oftener in real life than in fiction.

A young man, nineteen years of age, a mechanic, was arrested in one of the rural towns of New York on the charge of drunkenness and disorderly conduct, and was lodged in the jail of the county. He had, down to the time of his arrest, sustained a good character for industry and unquestioned integrity, but he had the faults and weakness of a convivial temperament, which, on this occasion, had carried him to an excess quite unprecedented in his previous experience; and the arrest was, undoubtedly, a proper one to be made. The jail where he was confined was built on the common, nefarious plan of construction; extending through the center of the building, an open passage or hallway, on both sides of which were arranged blocks of cells, the cells communicating with the central passage by open-grated doors; the insufficient means of ventilation, the imperfect drainage, the meager accommodations for bathing, and the uncleanly habits of the inmates, all combined to befoul the atmosphere of the place to such a degree as often to affect with nausea a person entering from the fresh air outside. During the daytime the cell doors were kept open, and, with the exception of two or three prisoners of a contumacious or quarrelsome disposition who were kept locked in their cells, all the prisoners flocked out and herded together in the common passageway. Among them were some notorious and desperate criminals, and quite a large fraction of the whole were charged with, and subsequently convicted of, State Prison crimes. No industrial occupation whatever was provided for the inmates of that jail; they toiled not, neither did they spin, and this is true of nearly all the county jails in the United States. The main occupation of the prisoners was conversation—call it, rather, the use of language—and such language as can be fitly characterized here only in the most vague and general terms. The talk ran principally on crime, the latest and most approved methods of committing it, the most ingenious devices for escaping detection, the narration of criminal exploits, and planning for future adventures, all highly seasoned with profane oaths and

ribald jests, licentious stories, and obscene songs, sneers at all the manly virtues, and blasphemy against everything good and holy. No disciplinary restraint whatever was imposed on the intercourse of the prisoners with each other, and all were huddled together in promiscuous companionship, the old and the young, the adept and the novice in crime, the susceptible and the incorrigible. In this pest-house our prisoner was immured, and into this unholy company he was immediately launched. The jail was crowded, and the young culprit was assigned to a cell in company with a man under the charge, and who was subsequently convicted of the crime, of burglary. As a newcomer, he attracted the general interest and curiosity, and though shrinking from such unwonted companionship he could not escape from it. The place yielded no facilities for retirement or meditation or silence had he desired them, but he shrank still more from seclusion than from companionship. Feelings of remorse and bitter humiliation at the sad estate to which his folly and sin had brought him, burned within him, and these he sought to quench by mingling in the mad throng; anything, rather than the gnawings of conscience. And so he drifted on with the tide, whether he would or not. For ten long days, while awaiting trial, he breathed this foul atmosphere of crime and blasphemy and all uncleanness; and the pollution of the place wrought its inevitable infection in his mind and character. He was then arraigned for trial, and the Court, upon proof of previous good character, and in consideration that this was the prisoner's first offense, granted him a full discharge upon the promise of future amendment. And so, the law having filled its majestic function, this young mechanic was restored to society, no longer a prisoner, but a free man. But those ten days had set their indelible brand upon his soul, and had settled the crisis in his life. Does it require any prophetic insight to trace the subsequent career of that life—its successive stages of rapid descent from bad to worse, from misdemeanor to felony? Five years elapse, and the natural gravitation of crime has made the young mechanic, whose youth was full of good possibilities, a State prisoner and a confirmed criminal. Was it not the county jail that sealed his doom?

If this young man when first arrested had been confined in a solitary and silent cell, his thoughts and memories would have been his sole companions. Reflection, which he could not shun, might have forced upon him for the first time a realization of his danger—of the habits and tendencies that were dragging him downward—of the ruinous folly of his course; conscience would surely have uttered its most solemn warning; and every true and manly impulse in his nature would have urged him to make that crisis the turning point in his life. Ten days of solitary confinement, with its chastening influence on a nature not yet hardened by crime, would certainly have proved a beneficent discipline; and in very many instances of first offense, it would mark the beginning of a repentant and radical amendment of the life.

But county jails, as they are now organized, are centers of corruption, and, through the prisoners discharged from them, are scattering their pestilent influences throughout the lower grades of society. They are called, by every one who has investigated their condition, schools of crime, seminaries of vice. Sinclair Tousey said of them, "More of the vice and crime that prey upon the community can be

directly traced to the corrupting influences of the county jail than to any other cause, not excepting the use of intoxicating liquors."

One of the worst features of the county jail consists in the fact that it is a *primary* school. It is the place where those who have committed their *first* offense, who have just started on a downward career, are imprisoned, and there receive their initiation in crime. The county jail is used for two radically different and distinct purposes: first, as a place of detention until trial for persons who are simply accused of crime, and who, until convicted, are presumed by law to be innocent; and, secondly, as a place of imprisonment, under penal sentence, of persons who have been tried and convicted of crime. These two classes, one presumed to be innocent and the other proved to be guilty, are treated without distinction, and herded together indiscriminately in the polluting companionship of the county jail. It is in violation of positive right to *punish*, or to treat like a criminal, a man who is presumed to be innocent. This is an enormity which, if it did not exist, would seem to be impossible in any civilized State. To lock up a person unjustly accused of some petty misdemeanor, or detained because he had the misfortune to witness the commission of a crime, in the same cell with a professional thief, to enforce association between the novice in crime and the confirmed criminal, to subject the young to the contamination of the old offender—all this comingling is not only inhuman, it is opposed to every principle of social policy.

The county jail is like a hospital where, if you can imagine such an absurdity, all the patients are confined in a single room without the slightest regard to the contagious character of the complaints from which they are suffering—where the unconscious victim of sunstroke is tenderly placed in the same bed with a smallpox patient, where the laborer who has fallen from a scaffold is subjected to the tender mercies of a companion delirious and uncontrollable from *mania potu*, and where a boy attacked by measles is made the bed-fellow of a patient suffering from typhus fever.

In the county jail, as if to insure infection, the prisoners are kept in enforced idleness; unsupplied with any industrial occupation which might exert a healthy and diverting influence, they are thrown upon mutual companionship as their only possible resource; and so, as if by a malevolent forcing, the leaven of unrighteousness is made to pervade the whole mass.

The declaration made by the great jurist, Edward Livingston, half a century ago, is no less true to-day: "Vice (he said) is more infectious than disease, and it would be more reasonable to put a man into a pest-house to cure him of headache, than to confine a young offender in \* \* \* one of our common jails, organized on the ordinary plan, to effect his reformation."

Consider, now, that these jails are instituted in each county throughout the length and breadth of this land, constantly receiving and intermingling the worst criminals with misdemeanants, with innocent persons unjustly accused, with young offenders just on the brink of a downward career—and only a faint conception can be formed of the magnitude and extent of the demoralization wrought by the county jail. There is no other institution in this country, having an official and legalized existence, that is such a reproach and curse on our civilization.

In battling against this evil there are some very discouraging facts.



It is not only widespread, but so evenly distributed, that it would be difficult to say which State in the Union is entitled to the preëminence of having the *worst* county jails. The movement in favor of prison reform, which has made greater progress within the last fifty years than any other branch of social science, has been directed mainly toward prisons of the higher grades. It has achieved practically nothing toward the renovation of the county jail. Notwithstanding the general advancement in popular intelligence, and in humane sentiment, the same abuses are found in the county jails that characterized them fifty, and even a hundred years ago. They remain the most stationary as well as the most disgraceful element in our political organism.

There are several reasons that account for this torpidity. One main reason lies in the fact that the county jail is subject to an exclusively *political* control. It falls under the dominion of the Sheriff of the county, and yields an important share of the income of that office. The Sheriff is an autocrat in the county jail; its management is a disagreeable part of his function, and is tolerable to him only as it is made profitable. The Sheriff's office, speaking generally, represents a bad element, but a very powerful element, in local politics—an element which takes little interest in moral reforms, but has a keen eye for the emoluments of office. Improvements in the county jail involve the expenditure of money; the Sheriff is averse to incurring such expenditures on his own account, and, in justice to him, it must be said that the people are equally averse to raising the money by taxation. There is no tax that the Supervisors of the county are so loth to impose, or that the people so grudgingly pay, as a tax to enlarge or improve the county jail. The public take no interest in details about the management of a prison; the whole subject is most positively distasteful to them. There is no organized public body that feels much responsibility about the county jail; and so the whole business is relegated to the Sheriff, who exercises a supreme and unchallenged control. The Sheriff has a brief tenure of office; he has little knowledge about prison management, and still less about prison reform; he takes the jail as he finds it, and administers it as his predecessors have done, and so it has been handed down from generation to generation. Indeed, the Sheriff, even if an earnest and intelligent reformer, would be powerless to accomplish any *radical* improvement. He could not keep the prisoners in solitary confinement, because the construction of the jail is such that the inmates of cells can communicate with each other almost as freely through the grated doors as when congregated in a common hall. He could hardly be expected to keep the prisoners at hard labor unless some specific appropriations were made for the purpose. The possibilities of jail reform by the action of the Sheriff are only in superficial and meager particulars.

You will observe that the evils which demand correction are inherent, not only in the administration of the county jails, but in the very construction of the jails themselves. No remedy will ever be effective that is not as radical as the evils are deep-seated and vital. Two measures of reform, or, more properly, of revolution, must be insisted on as absolutely indispensable. The first of these is the elimination from the county jail of all persons convicted and under sentence for crime. The disposition to be properly made of these convicts will be treated further on; but the jails should be restricted

to use as places of detention for persons accused of crime until trial; and during this period of preliminary restraint, which is ordinarily brief, each prisoner should be confined in a separate apartment where the possibility of communication with other inmates of the jail is cut off. The imperative necessity of such isolation rests on several grounds; it is the only way to avert the moral contamination which must inevitably result from unrestrained companionship; and the solitude has, moreover, a positive value as a measure of discipline. The imprisonment of a person under the charge of crime, whether justly or unjustly, marks a serious crisis in his life; it is an event which must exert some determinative influence for good or evil on the whole of his future career. It is a time for retrospection, for self-examination—a time when conscience is aroused to unusual alertness, and when the better impulses of the nature plead for supremacy. Solitude is specially adapted to foster and stimulate these chastening influences. Its disciplinary value has been fully recognized in the system practiced in the English prisons, where the first stage through which all convicts are made to pass after sentence, is one of solitary confinement for a period of nine months. This period is certainly too long, if unrelieved by industrial occupation; and for convict prisons, I should greatly prefer the plan which is, or was, practiced in the State prisons of Massachusetts and Vermont, where the prisoners, upon their commitment, are kept in solitude, without labor, for a term varying from one to four weeks. The person accused and awaiting trial needs facilities for reflection certainly not less than the convict, and a brief period of solitary confinement is the best possible stimulant and treatment.

This, then, is the first measure of reform which is presented as absolutely the *sine qua non* of any real improvement in the county jails; they must be used only as places of detention for accused persons awaiting trial, and each such person must be confined in a separate and wholly isolated cell. None of the existing county jails are now adapted to this use. Some of them are susceptible of a remodeling so as to answer the requirements of separate confinement. But it is true of the vast majority of the county jails that they are worthy only of utter destruction; on sanitary grounds alone, most of these structures ought to be leveled to the ground with a righteous indignation; they are so impregnated with the germs of disease, so saturated and infested with all uncleanness, they are built with such utter disregard of the laws of health and humanity, that they are beyond all remedies save those of fire and earthquake. At whatever cost or sacrifice, this reform must be enforced; we must have places for the separate confinement of accused persons; without this remedy there is no possible escape from the enormities and all the festering corruption of the county jails as they exist to-day.

There is a second measure of reform equally radical and equally imperative. Having removed from the county jails the convicts undergoing sentence, what disposition shall be made of them?

Whatever that disposition may be, do not, at least, manage them as they are now treated in the county jails—do not herd them together without restraint, without discipline, without any elevating or reforming influence, to act and react upon each other until all shall have been brought down to the moral level of the worst of them.

They are convicts and must be disposed of as such. They must be put in prison and must be subjected to a stern regimen. They need,



as all convicts need, to undergo a severe reformatory and disciplinary treatment; they need the development that comes from hard industrial labor, which is the most healthful tonic for character; they need the rigid training of the will that comes from obedience to inflexible rules and regulations; they need the education and influences that shall build up in them habits of self-command, industry, thrift, self-reliance; in a word, their characters need to be brought under the dominion of those motives and principles that preserve from crime ordinary men in common life. And all this is exactly the training that a well ordered reformatory or prison ought to impart. To such reformatory prisons all the convicts now festering in the county jails ought to be transferred.

In completion, then, of the second measure of reform which I am advocating, we require new reformatory prisons to take the place of the county jails for the confinement of jail convicts. From what source shall these prisons be derived? The answer to this important question will conclude the present paper.

There are comparatively few counties in which the number of sentenced offenders is large enough to populate a reformatory prison. Experience shows that better reformatory results are attained in a large prison than in a small one within certain well fixed limits. Motives of economy, fortunately, point in the same direction as well. A single convict prison would ordinarily answer the requirements of four, eight, or even twelve counties, according to the varying density of population.

These new prisons, therefore, could not properly be *county* institutions, or be brought under *county* administration. Has it ever occurred to you that there is no reason, on principle, why the *county* should undertake the burden of punishing offenders against law? Criminal laws are enacted by the *State*, and the infraction of them is an offense against the *State*, not against the *county*. Why should not the *State* protect its own majesty? There is an incongruity in the *county* which has no legislative power assuming to punish the violation of *State* law; that is the natural and essential function of the *State* itself. No sufficient reason can be alleged why the *State* should punish a certain class of convicts and the *county* a certain other class of convicts, or why the *State* should establish and maintain certain prisons and the *county* certain other prisons, both for the punishment of offenders against the law. All convicts of whatever grade should be delivered over to the *State*, and all prisons for their confinement and treatment should be under *State* administration and control. The advantages of such a centralized administration are sufficiently obvious; it will secure uniformity in the application of penal justice, it will bring far greater efficiency into the management, and will tend to the introduction of more enlightened and scientific methods in the discipline of the convicts. The *county* organization is in every way ill adapted to the maintenance of a punitive prison; it has not sufficient stability, breadth, or strength for such an undertaking, which requires for its success the resources of power, of experience, of acquaintance with modern prison science, which the *State* alone can command.

The value of a centralized administration has been recognized in England, which can boast of the best prison system in the world. By the Act of Parliament passed in 1877 all the prisons in England have been made subject to the administration of the Home Department, and thus one homogeneous and consolidated system has been applied

to the treatment of all criminals. The advantages of that system are seen in the continued and rapid decrease of crime in England.

It is, therefore, in every way desirable as well as reasonable that the counties as such should be relieved altogether from the burden of undertaking the penal treatment of offenders against the law. And the new prisons which are needed to receive the convicts from the county jails should be established and maintained by the *State*—call them by what name you will—district jails, reformatories, houses of correction; they should all be brought under the supervision and control of one central power, and that the power of the Commonwealth.

Before closing, I cannot refrain from adverting to an objection which is sure to be raised against the scheme here advocated. The plan proposed is not feasible, it will be said, because the building of new prisons and the reconstruction of the county jails involves enormous expenditures of money. I will make only two suggestions in answer to this economic objection, and they must necessarily be presented in very brief and concise form.

The costliness of an enterprise is no objection to it, provided it will yield returns commensurate with the outlay. You can estimate the cost of the proposed changes; but can you compute the value of the resulting advantages? The elements in such a computation are the probabilities of reformation to be anticipated from the new system, and the money value to society of each reformed criminal. We are not without precise data for measuring both of these elements. Experience has demonstrated that the application of a proper prison discipline regulated by approved scientific methods will reform *eighty per cent* of the convicts subjected to treatment; that is, will so operate upon the character as to divert from a life of crime eight convicts out of every ten and turn them into law-abiding and self-supporting citizens. This wonderful result has been actually achieved, and is now in process at the Elmira Reformatory; and that, too, with felon convicts, guilty of *State* Prison offenses. Jail convicts are less far advanced in a criminal career, and, therefore, presumptively more susceptible to reformatory influence. If all the convicts now herded in the county jails were placed in reformatory prisons under a proper and skillful regimen, it is a reasonable anticipation that eighty per cent of them could be reclaimed from crime and so trained as to lead a life of honest self-support. As to the economic gain to the property interests of society in being freed from the depredations of so large a fraction of jail convicts, I shall make a statement which will appear startling and extravagant, but it can be fully vindicated by positive figures at my command—the *saving to the community, computed in actual money, resulting from the reclamation of eighty per cent of our jail convicts, would be sufficient in a single year to rebuild all the county jails in the United States.*

The second suggestion I have to make, in answer to the economic objection, is of a different character. The most important problem confronting us as a people is, how to diminish and hold in check the criminal classes. We are told by General Brinkerhoff, as the result of extensive research, that the criminal class of the United States is increasing with frightful rapidity, and by a percentage that far outruns the increase of population. The fact is fraught with danger. There are fierce and subtle forces at work under the names of socialism, communism, nihilism, that menace not only our institutions,

but our very civilization. These forces are yearly acquiring system and strength; they are openly hostile to law and order, to property, to every organized government, to religion, to all that makes life worth living. The issues that our age will thus be brought to face are not mere questions of paltry economies; they are issues of life and death, affecting all that men hold dear. It is to the criminal classes that these lawless organizations owe their energy and deadly persistence. It is certain that from the county jails there comes a steady column of recruits, to swell the ranks of those who threaten not only our prosperity, but our national life. *That flow must be stopped.* It is not a question of cost, it is a necessity for self-preservation. It is a necessity resting on higher grounds than motives of self-preservation or impulses of philanthropy, or even sentiments of patriotism; it is an urgent and sacred *duty* of citizenship, binding us all in the sight of God and man.

## APPENDIX "D."

### ORATION TO CONVICTS.

Delivered by the late ex-Governor HORATIO SEYMOUR, on Independence Day, 1879, to the inmates of Auburn Prison. A noteworthy speech.

On the fourth of July, 1879, ex-Governor Horatio Seymour delivered the following address to the assembled multitude of prisoners in the Auburn State Penitentiary. It may be read with interest and profit by all readers:

I have declined all invitations this year to make public addresses; but when your Warden asked me to speak to you to-day, I made up my mind to do so, although at the hazard of my health. My interest in the inmates of this and other prisons grows out of official duties, as I have had to act on many cases of applications for pardons. I have learned from a long experience with men in all conditions of life, that none are without faults and none without virtues. I have studied characters with care. I have had to deal with Presidents and with prisoners. I have associated with those held in high honor by the American people. On the other hand, the laws of our State have placed the lives of criminal men in my hands, and it has been my duty to decide whether they should live or die. The period in which I took the most active part in public affairs was one of great excitement, when passions and prejudices were aroused; and in common with all others engaged in the controversies of the day, I have felt the bitterness of partisan strife; nevertheless experience has taught me to think kindly of my fellow men. The longer I live, the better I think of their hearts, and the less of their heads. Everywhere, from the President's Mansion to the prisoner's cell, I have learned the wisdom of that prayer which begs that we may be delivered from temptation.

Another great truth is taught by experience: hope is the great reformer. We must instil this in men's minds if we wish to cultivate their virtues, or enable them to overcome their vices. It has been said that despair is the unpardonable sin; for it paralyzes every sentiment that leads to virtue or happiness. To help us do our duty, we must cherish hope, which gives us courage, and charity, which gives us hope for others. For this reason, when Governor of this State, I did all I could to gain the passage of laws which enable each one of you, by good conduct, to shorten the term of your imprisonment, and if I had my way you would have a share in the profits of your labor. But I stand before you to-day to speak of another ground of hope, of a higher and more lasting character than mere gain or shortened terms of punishment; and what I have to say does not point to you

alone, but to men of all conditions. I do not mean to take the place of those who teach your religious duties. They are far more able than I am to make these clear to your minds; yet it is sometimes the case that we see things in lights in which they are not usually placed before us, and some thoughts which have occurred to me, in a review of my life, may be of value and interest to you. When we grow old we are struck with the fleetness of time; our lives seem to be compassed into one brief period; we suddenly find that pursuits that we have followed are closed, and we are confronted with the question, not what we have gained, nor what positions we have held, but what we are in ourselves. We know it is our duty to do what is right, and to avoid doing wrong, but when we look back, if we add up all of our good deeds on the one hand, and our bad acts on the other, we find a startling balance against us. When men reach my time of life, their minds turn towards the past, and they travel backward the paths they have followed. They see things from the opposite side from which they were viewed in youth onward, and are struck by truths which never break upon their minds until they look back upon them.

Sitting before my fire on a winter evening, and musing, as old men are apt to do, about their acts, their errors, their successes, or their failures, it occurred to me what I would do if I had the power, and was compelled to wipe out twenty acts of my life. At first it seemed as if this was an easy thing to do. I had done more than twenty wrong things for which I had always felt regret, and was about to seize my imaginary sponge and rub them out at once, but I thought it best to move with care, to do as I had done to others, lay my character out upon the dissecting table, and trace all influences which had made or marred it. I found, to my surprise, if there were any golden threads running through it, they were wrought out by the regrets felt at wrongs; that these regrets had run through the course of my life, guiding my footsteps through all its intricacies and problems; and if I should obliterate all of these acts, to which these golden threads were attached, whose lengthening lines were woven into my very nature, I should destroy what little there was of virtue in my moral make-up. Then I learned that the wrong act, followed by the just regret, and by thoughtful caution to avoid errors, made me a better man than I should have been if I had never fallen. In this I found hope for myself and hope for others, and I tell you who sit before me, as I say to all in every condition, that if you will you can make yourselves better men than if you had never fallen into errors or crimes. A man's destiny does not turn upon the fact of his doing or not doing wrong—for all will do it—but of how he bears himself, what he does and what he thinks after the wrong act. It was well said by Confucius that a man's character is decided, not by the number of times he falls, but by the number of times he lifts himself up. I do not know why evil is permitted in this world, but I do know that each one of us has the power to transmute it into good. Every one before me can, if he will, make his past errors sources of moral elevation. Is this not a grand thought, which should not only give us hope, but which should inspire us with firm purposes to exercise this power which makes us akin to the Almighty; for He has given it to us and has pointed out in His works how we shall use it. The problem meets us at every step. There is nothing we do which will not make us better or worse. I do not speak merely of great

events, but of the thoughts upon our beds, the toil in the workshop, and the little duties which attend every hour. God, in His goodness, does not judge us so much by what we do; but when we have done things, right or wrong, our destiny mainly turns upon what we think and do after their occurrence. It is then we decide if they shall lift us up to a higher level, or bear us down to a lower grade of morals. Our acts mainly spring from impulses or accidents—the sudden temptation, imperfect knowledge, or erring judgment. It is afterthought that gives them their hue. The world may not see this; it may frown upon the deed and upon the man who, nevertheless, by his regrets, makes it one which shall minister to purity and virtue in all his after life. You, who sit before me, in some ways have advantages over other men whose minds are agitated by the hopes and fears of active pursuits, who find no time for thoughts which tend to virtue and to happiness. With each of you, in a little time, the great question will be—not if you are to be set free, not what the world thinks of you, nor what you have—but what you are; for death often knocks at the door of your cells, and some of your number are carried from their narrow walls to the more narrow walls of the grave.

Let it not be thought that I prove wrong may be done so that good may follow. With Saint Paul, I protest against such inference from the truth that men are saved by repentance for their sins.

But let us look further into this subject, for it deeply concerns us. Though we are unable to recall the errors of the past, we may so deal with them that they will promote our virtue, our wisdom, and happiness. Upon this point I am not theorizing. Whoever thinks will learn that human experience proves this. Let us take the case of our errors. We should find if we could rub them all out that we should destroy the wisdom they have given us, if we have taken care to make our errors teach us wisdom. Who could spare their sorrows? How much that is kind and sympathetic in our natures, which lead us to minister to the grief of others, and thus to gain consolations for ourselves, grow out of what are felt as keen calamities when they befall us.

Following out the line of my thoughts, when I assumed that I had the power and was compelled to drown in Lethean waters certain acts, I found I could not spare errors which call forth regrets, mistakes which teach us wisdom, or the sorrows which soften character and make us sensible of the sympathies which give beauty to the intercourse of life. As I had to obliterate twenty events, I found that I could best spare the successes or triumphs which had only served to impart courage in the battle of life and had but little influence in forming character. It is true, that wherever and whatever we are, we can so deal with the past that we can make it give up to us virtue and wisdom. We can, by our regrets, do more than the alchemist aims at when he seeks to transmute base metals into gold, for we can make wrong the seed of right and righteousness; we can transmute error into wisdom; we can make sorrow bloom into a thousand forms like fragrant flowers. These great truths should not only give us contentment with our positions, but hope for the future. The great question, what are we, presses itself upon us as we grow old, or flashes upon us when our lives are cut short by accident or disease. Within these walls, but few days pass without that question being forced upon the minds of some who have reached the end of life's journey. Surely, it should give hope and consolation to all to feel

that they can, in the solitude of the cell, or in the gloom of the prison, by thought, by self-examination, make the past, with its crimes, its errors, and its sorrows, the very means by which they can lift themselves into higher and happier conditions. This work of transmuting evil into good, is a duty to be done by all conditions of men, and it can be wrought out as well in the prisoner's cell as in the highest and most honorable position, for when you do this, you work by the side of the Almighty. All human experience accords with the higher teachings of religion, that holds out hope to men who feel regret for every evil act. I wish to call your minds to that amazing truth, that there is a Being who rules the world with such benevolence, that he enables weak and erring mortals, if they will, to turn their very sorrows and errors into sources of happiness.

We have many theories in these days in which men try to tell us how the world—acting upon fixed laws—has made itself; that it goes on by progress that regards nothing but certain rules of advancement, regardless of all other considerations save their own irresistible, self-compelling principles. But here we have a truth not only given us in Holy Writ, but proved by our experience, that mental regret will convert a material wrong into a blessing; or, if the offender wills, it will make the same hundredfold more hurtful if he rejoices in his wrong-doing, or hardens his heart against regret. Materialism, evolution, pantheism, or any of the theories which deny the government of an intelligent God, are all phases of fatalism, and are confuted by this truth, that we can, by conforming to his laws, which demand repentance, convert evil into good, or by violating them make evil tenfold more deadly and destructive. We can, by our own minds and sentiments, change the influence of material events, and change the action of laws which govern the world. If man, with all his weakness, can do this, it can only be by the aid of a higher power which shapes, directs, and regulates.

I know that what I have said is but an imperfect statement of great truths, compared with the teachings of the pulpit which you hear every Sunday. As my purpose is merely to speak to you of what I have learned in the walks of life, I can give you from this narrow field but partial views of great truths. They may be of no value to you, but I trust you will accept them at least as proof of my sympathies with your condition and sorrows, for if any ambition lingers in the breast of him who speaks to you now, it is that he may be the friend and adviser of the erring and wrong-doer. He has been taught by self-examination and the study of others, that we all belong to that class, and that we owe to one another any aid we can give to our fellows when they fall by the wayside.

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REPORTS TO HON. GEORGE STONEMAN,  
*GOVERNOR OF CALIFORNIA,*  
ON  
CERTAIN CLAIMS  
OF THE  
STATE OF CALIFORNIA  
AGAINST THE UNITED STATES,

NOVEMBER 1, 1878, TO NOVEMBER 1, 1886.

By  
JOHN MULLAN,  
*Agent and Counsel for the State of California.*



SACRAMENTO:  
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1886.



WASHINGTON, D. C., November 1, 1886.

*To his Excellency, Hon. GEORGE STONEMAN, Governor of California :*

SIR: In conformity with Section No. 332, Political Code of the State of California, I beg leave respectfully to now submit to you the following report on the several matters intrusted to my care, under my "contracts with the State of California for the collection of California State claims against the United States," comprising a period from November 1, 1878, to November 1, 1886.

I am, sir, very respectfully, your obedient servant,

JOHN MULLAN,  
State Agent and Counsel for California.

## REPORT.

WASHINGTON, D. C., November 1, 1886.

*Hon. GEORGE STONEMAN, Governor of California:*

DEAR SIR: I have the honor to submit you a report upon the several claims of the State of California against the United States, for which I have been heretofore appointed agent and counsel, and for all of which I have been so acting for a period covering the eight years last past, to wit: from November 1, 1878, to November 1, 1886.

I have from time to time during said period made to you and to your predecessor, and to the present State Surveyor-General and Adjutant-General of the State of California, and to their predecessors in office, sundry detailed reports of my acts in all these premises, and have addressed you and them from time to time such proper communications thereon as enabled you and them to keep *au courant* with all proceedings had therein as the same transpired. Yet, in order, at the termination of your administration as Governor of the State of California, that you may have full information on all these matters, and for the purpose of your laying the same before the Legislature at its next session, and in view of the importance to the people of California of sundry of these several claims and of many circumstances connected therewith, and especially for the purpose of having an authentic record of the history of all thereof for future reference, in so far as my agency in any of these premises has been or may be hereafter concerned, I deem it proper to now submit you a general summary, covering each of said claims as represented by me during the eight years last past.

These several claims by me represented, as agent and counsel for the State of California, are as follows, to wit:

*First*—The five per centum of the net proceeds of the cash sales of the public lands in California made by the United States subsequent to the date of her admission into the Union—September 9, 1850—and not heretofore paid to the State of California by the United States.

*Second*—The refunding by the United States to California her quota of the direct tax levied by the United States under the Act of Congress approved August 5, 1861, and not heretofore reimbursed the State of California by the United States.

*Third*—The refunding by the United States to California the moneys heretofore by her expended on account of the Modoc Indian war, in north California, in 1872 and 1873, and not heretofore reimbursed the State of California by the United States.

*Fourth*—The refunding by the United States to California the moneys heretofore by her expended on account of Indian (other than Modoc) hostilities therein, and upon the borders thereof, between September 9, 1850, and June 27, 1882, and not heretofore reimbursed the State of California by the United States.

*Fifth*—The refunding by the United States to the State of California the moneys heretofore by her expended on account of the war of rebellion, and not heretofore reimbursed the State of California by the United States.

*Sixth*—The refunding by the United States to the State of California the moneys by her heretofore paid as *interest* on the principal borrowed by her on account of the two foregoing items, and not heretofore reimbursed the State of California by the United States.

*Seventh*—The refunding by the United States to the State of California the moneys by her heretofore paid the United States as *fees* upon those particular selections and locations of lands under the several land grants made by Congress to California, which have been declared *invalid* by the United States, not allowed, and which were finally canceled by the United States, wherever said fees have not been heretofore reimbursed the State of California by the United States; and, also,

The securing for the State of California an indemnity in either lands or money of so much of its Swamp Land Grant, made to her in the Act of Congress approved September 28, 1850, and confirmed to her in the Act of July 23, 1866, as have heretofore not inured to the benefit of said State, but which lands have in sundry instances been heretofore sold, or been otherwise disposed of by the United States, and without any benefit accruing therefrom to the State of California.

#### No. 1. THE FIVE PER CENT CLAIM.

During a law practice in California, extending over a period of several years, devoted chiefly to land matters arising therein, it came to my knowledge that the State of California had never received from the United States, nor had ever been granted by Congress, any percentum of the net proceeds of the cash sales of the public lands therein made by the United States; and that while California had no *legal* claim against the United States therefor, yet in view of the fact that a similar grant had been made by Congress, to all the other public land States of the Union, that an *equity* therein at least would seem to exist in behalf of California, which, if properly represented and urged at the proper times and places, by a competent party conversant with the subject-matter, might eventuate in finally securing a similar grant to California.

Therefore, in the year 1878, I brought this matter to the special attention of the State authorities of the State of California, to wit: to her Governor, Honorable William Irwin, and to her State Surveyor-General, Honorable William Minis, and made fully known to them all the circumstances and facts connected therewith within my knowledge, believing then and knowing now that no systematic effort had ever been made, *prior* to that time, to secure California the benefits of this grant.

It is true the Legislature of California, upon the recommendation of Hon. John B. Weller, Governor of California, on March 4, 1858, and in approval of the urgent and intelligent presentation to him of the valid reasons therefor by Hon. Andrew J. Moulder, the Superintendent of Public Instruction, under date of March 4, 1858 (see Assembly Journal, ninth session, pages 302 *et sequiter* and 314), did, on March 11, 1858, memorialize Congress to make her such a grant; but the matter, so far as I know, began and ended in this one step. Certainly, in 1878, a period of twenty years had been allowed to come and go, and during which time no beneficial results had flowed to her therefrom.

Even in that single effort the Legislature of California admitted that Congress had changed, *by departing from* its policy, in the case of California in these premises—an admission which, to a very great extent, gave away the very case which the memorial sought to secure; but, be that as it may, one thing is most sure, that this admission, such as it was, could certainly not strengthen her position as a petitioner after a long lapse of years subsequent to the date of her admission into the Union.

A copy of this memorial is hereto attached, and marked Exhibit No. 1, and made a part hereof.

After having maturely considered the subject-matter in all its bearings, and all that it might involve, I was willing to visit Washington and there undertake, *at my own expense*, the presentation of this equitable claim of California before the proper United States tribunals, provided I were so authorized. The subject-matter having been duly considered by the State Surveyor-General and ex officio Register of State Lands, Hon. William Minis, the head of that branch of the State Government more directly than any other charged by law with the superintendence of the public interests in all matters relating to lands and land sales in California—that officer, on November 1, 1878, commissioned me as Agent and Attorney for the State of California in these premises, a copy of which commission is hereto attached and made a part hereof, and marked Exhibit No. 2.

My said appointment and commission were made subject to the action of the Legislature, for the purpose of ratifying and validating the appointment so by him made, and of fixing the compensation which I should receive, and which latter was to be entirely contingent upon success, to wit:

That I was to get nothing if the State got nothing; and per contra, if the State's claim should be recognized, then I was to receive such compensation as the Legislature might thereafter fix and declare whenever it should take up, consider, and act thereon.

Armed with this authority, I proceeded from California to Washington City in the month of November, 1878, at my own expense.

Immediately upon my arrival in Washington, for the purpose of testing the sense of the General Land Office as to whether there was sufficient authority of law by which that office could then recognize this claim of the State of California, I, on the twentieth of November, 1878, submitted to the honorable Commissioner of the General Land Office, my letter of appointment, together with a communication, copy of which is hereto appended and made a part hereof, and marked Exhibit No. 3.

To this letter the honorable Commissioner of the General Land Office replied in a communication dated November 28, 1878, a copy of which is hereto appended and made a part hereof, and marked Exhibit No. 4.

Having thus exhausted all *executive* remedy in the premises, I thereupon determined to address myself next to Congress, in order to secure that legislation without which the honorable Commissioner of the General Land Office had informed me he could not state an account to the Treasury Department in favor of the State of California; and deeming it my duty in these premises (with but few exceptions) then and now to always proceed through the members of the California delegation in Congress, in either the Senate or House, and for this reason, I thereupon addressed a letter on this subject to the Hon. J. K. Luttrell, then in Congress from California, copy of which letter is hereto attached and made a part hereof, and marked Exhibit No. 5.

To this letter Mr. Luttrell replied in a communication, a copy of which is hereto attached and made a part hereof, and marked Exhibit No. 6.

Not being satisfied with this view of the case as expressed by Mr. Luttrell,

I then, for reasons appearing to me good and sufficient, next brought the matter to the attention of Hon. P. D. Wigginton, then also in Congress from California, who, at my request, on January 20, 1879, introduced in the House a bill, H. R. No. 6081, third session, Forty-fifth Congress, to make this grant to California, and copy of which bill is hereto attached and made a part hereof, and marked Exhibit No. 7.

While I was not sanguine in securing any final result on this bill then, so near the end of the third and last session of the Forty-fifth Congress, yet I desired to get the matter on record and before Congress at the very earliest date possible, and due diligence on my part seemed to me to make this a matter of duty which I owed the trust that I had undertaken to execute.

This bill, it will be perceived, proposed to dedicate said proceeds to the "making or improving public roads, constructing drainage and irrigating ditches and canals, to effect a general system for irrigating the agricultural lands in said State, and in the mode and manner as the Legislature of said State may establish and direct."

During this third session of the Forty-fifth Congress, the Hon. George W. Julian was Chairman of the House Committee on Public Lands, and in whom I did not think I had found any friend of this measure; on the contrary, it seemed to me that he, with other members of that committee, seemed to labor under the impression that the State of California had no claim for this grant that was valid in either law or equity, and because she had accepted an admission into the Union without such grant or condition, and she had allowed twenty-eight years to pass without even urging this claim, which at best was questionable, and not well founded; and that the most that California could expect was, that should Congress make her any such grant, the same should take effect only from the date of its passage; which thereby, as I saw, would destroy more than one half of the value of this claim. I therefore feared to urge final action on this bill during the Forty-fifth Congress, fearing either an adverse report or one such as would limit the grant, by making it take effect from and at the date of the passage of the Act, and if action by Congress on such report should be delayed, as it would likely be, then the effect would inevitably be to render this grant barren of those substantial benefits for which I pleaded, to wit:

*That this grant, when made, should relate back to the date of the admission of the State of California into the Union, or at least to the earliest date when the first sales of public lands for cash in California had taken place, and which date is July 1, 1857.*

Finding the Committee on Public Lands during the Forty-fifth Congress little disposed to take any favorable action on this measure, I deemed it more prudent and diplomatic to let this measure rest until another Congress should meet, so that the Forty-fifth Congress adjourned with this matter unacted on but still *sub judice* before the House Committee on Public Lands, and as hereinbefore stated.

In view of the situation as I found same to exist in Washington during the Forty-fifth Congress, and in order that the Legislature of California might express itself *de novo* on this subject, and believing that a resolution to Congress, expressive of its latest views and wishes therein, might have the effect to stimulate to more active efforts the California delegation at least in behalf of this measure, I prepared a resolution having for its object to express the wishes of the Legislature of California on this subject, and transmitted the same to Sacramento on the twenty-ninth November, 1880, to the Hon. Grove L. Johnson, then a State Senator in the California Legislature, with the request that he would interest himself in the subject-

matter, and to introduce in the State Senate my said resolution, and informing him, among other things, that the interest of the State of California in this measure, would aggregate at least one half million dollars; and which resolution was of a tenor like unto the bill which I had prepared and had Hon. P. D. Wigginton introduce, and as hereinbefore described.

This resolution passed the Senate of California during its session of 1880-81, but it failed to pass the Assembly during that session, when the Legislature adjourned *sine die*.

The Legislature of California having been convened in session in 1881, I again renewed my efforts to have that body pass a similar resolution at this session on this same subject, and with this object in view I again prepared another paper, and again transmitted it to Hon. Grove L. Johnson, still a State Senator at Sacramento.

Before action was taken by the Legislature on this paper, I wrote to Mr. Johnson to change the form of said paper, which was then only a resolution, into a *memorial*, which, upon reflection, I thought it ought to be; and also to change the dedication of the proceeds of this claim from internal improvement purposes, which had been my original intention, to *educational purposes*, which, upon reflection, I thought might subserve larger interests.

This memorial Hon. Grove L. Johnson, at my request, introduced in the State Senate of California, where it passed and went to the Assembly, where it also passed that same session, and became the Act of the Legislature during its session of 1881, and on the ninth day of February, 1881, it became the expressed will of the State in the form of Senate Concurrent Resolution No. 1, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 8.

Certified copies of this Senate Concurrent Resolution, which, in fact, and in the body thereof, was a *memorial* under the seal of the State, having been sent to me from Sacramento, I presented the same to each of our Senators and Representatives in Congress from California, and also to the Public Lands Committee in both Senate and House of Representatives, and thereupon I prepared two bills in harmony with said memorial, one of which, to wit, Senate Bill No. 311, was, at my request, introduced in Congress on December 8, 1881, by Hon. James T. Farley, and the other, to wit, H. R. No. 61, was, also at my request, introduced in the House by Hon. C. P. Berry, on December 13, 1881, and copies of which bills are hereto attached and made a part hereof, and marked Exhibits Nos. 9 and 9 $\frac{1}{2}$ .

Prior to this date, to wit, on nineteenth February, 1880, during the second session of the Forty-sixth Congress, the Senate having under consideration Senate Bill No. 19, relating to the general subject of the five per cent claims (of those public land States which were *then* the beneficiaries of a grant thereof), at my request Senator Farley submitted an amendment thereto, in words as follows: "And provided further, that the State of California is hereby placed upon the same footing as regards the five per cent of the net proceeds of the sales of all public lands in the said State with the States named herein, and shall be entitled to all benefits and payments to which they, or either of them, are entitled under this and all previous Acts of Congress." (See page 1010 Congressional Record, vol. 10, second session Forty-sixth Congress, February 19, 1880.)

This bill having failed to pass Congress, like as in the Forty-fifth Congress, we were unable to secure any action for our California five per cent claim during the Forty-sixth Congress—no effort having been made in the

House by me during the Forty-sixth Congress, as I feared the attitude of that committee, and especially its Chairman, on this proposition.

But, as before stated, I renewed my efforts before the next, or Forty-seventh Congress, and before which we had submitted, through Senator Farley, Senate Bill No. 311, and, through Hon. C. P. Berry, House Bill No. 61.

A house had assembled in the Forty-seventh Congress that changed the political character and *personnel* of the House Committee on Public Lands, and the change was more particularly marked by the substitution of Governor Pound, of Wisconsin, for its Chairman, *vice* Hon. George W. Julian, retired from Congress.

To support these two bills with appropriate facts and arguments, I compiled from various records and archives in the General Land Office a series of eight (8) tables of statistics, which contained a full history of all the legislation, from the earliest sessions of Congress to date, on this five per cent grant to the several States, and the reasons thereof, and the amounts of money received by the several States up to June 30, 1881, including a statement of the cash sales of public lands in California, made by the United States up to June 30, 1881.

I thereafter, to wit, April 14, 1882, submitted these tables to Hon. N. C. McFarland, Commissioner of the General Land Office, for his examination and approval, and that officer finding them to be correct, he, at my request, so certified. The original of these tables I filed with the Senate Committee on Public Lands in the Forty-seventh Congress, and copies thereof I filed with the House Committee on Public Lands, and appended other copies as exhibits to an argument which I then prepared in support of said Senate Bill No. 311 and H. R. No. 61, and copies of all of which I filed with the Public Land Committee in Senate and House, and with the members of the California delegation then in Congress, and copies of which are hereto annexed and made a part hereof, and marked Exhibit No. 10.

It was during this Forty-seventh Congress, to wit, on December 5, 1881, that Senator Voorhees, of Indiana, introduced Senate Bill No. 67, having for its object to authorize the accounting officers of the Treasury, when stating the accounts for this five per cent event in behalf of any public land State, that was *then* the beneficiary thereof, to so state the same that it should include the sales made by or for *Military Bounty Land Warrants* as well as those made for cash, and which Bounty Land Warrants sales had always theretofore been excluded from such statements when any settlements had been had between the United States and said public land States.

A House Bill, to wit, No. 4239, for this purpose, had also been favorably reported (in House Report No. 70) upon in the Forty-fifth Congress, a copy of which report is hereto attached and made a part hereof, and marked Exhibit No. 11, and a copy of said Senate Bill No. 67 is hereto attached and made a part hereof, and marked Exhibit No. 11½.

Senator Voorhees' Senate Bill No. 67 in the Forty-seventh Congress being in all respects similar to said House Bill No. 4239 in the Forty-fifth Congress, and being limited as it was exclusively to the public land States of Ohio, Indiana, Illinois, Missouri, Michigan, Wisconsin, Minnesota, Iowa, Nebraska, Kansas, Arkansas, Louisiana, Alabama, Mississippi, Florida, Oregon, Nevada, and Colorado—*California being the only public land State not named therein, and, therefore, specially excepted from its provisions*—at my urgent request, while the same was under consideration in the Senate, Honorable James T. Farley, then in the Senate, who theretofore had *not* been in favor of the general Military Bounty Land Warrant legislation as

contained in said Senate Bill No. 67 of the Forty-seventh Congress, yet finally agreed, at my request, to submit an amendment to said general Bill No. 67, *so as to include California*, copy of which amendment is hereto attached and made a part hereof, and marked Exhibit No. 12. This bill, amended by Senator Farley so as to include California, passed the Senate on the nineteenth day of May, 1882, by only five majority, and went to the House. Copy of the record of the vote had thereon is hereto appended and made a part hereof, and marked Exhibit No. 12½.

On the next day, upon a motion by Senator Pugh of Alabama, to reconsider the vote by which this bill passed the Senate, it was recalled from the House, and the vote by which it had passed the Senate was reconsidered and it was thereafter laid upon the table of the Senate, where it ever remained unacted on during that session.

It is due to truth to report that Senator Pugh had antagonized this bill during all the debates had thereon, and *only voted with the ayes in order to have the parliamentary privilege of moving its reconsideration*.

When Congress reconvened at its short and last session, the friends of the measure despairing of securing in so short a time any favorable congressional action thereon, failed to renew their further efforts in regard thereto, and consequently this bill, *which contained our California five per cent measure* in full effect, died with the Forty-seventh Congress. I now here insert a chapter of the history of this legislation within my personal knowledge, in order to record a fact which otherwise might never be recorded.

As I before stated, Senator Farley was *not favorable* to the general Military Bounty Land Warrant construction of the five per cent grant (a fact which, no doubt, Hon. Newton Booth, then also a Senator from California and a member of the Senate Committee on Public Lands, may possibly recall, as Senator Farley is now dead).

But Senator Farley's vote for this bill was then thought by its friends to be a necessity for its passage, and due to the fact that the Senate was thought to be quite evenly divided then on this general proposition, and because the sense of the Senate thereon having been informally taken it was found, certainly was then thought, that Senator Farley's vote *against* this general bill would defeat the same.

I have reason to believe that had Senator Farley voted against this general bill, that its friends would have thereafter given a cold shoulder by giving a large negative vote against Senator Farley's separate and independent Senate Bill No. 311, to grant California this five per cent claim.

Knowing these facts, I laid them all before Senator Farley, not once, but many times; and he appreciating the importance and the difficulty and the delicacy of his position on this general measure, finally waived all his objections to this general bill, in order that his action thereon should not thereafter be used as an argument or as a club with which to defeat our California five per cent claim, then pending, as it was, before the Senate in an independent and separate bill, to wit, Senator Farley's Senate Bill No. 311.

The friends of this general five per cent Senate Bill No. 67, which had solely for its object to include all sales of military bounty land warrants, indulged a confident belief that all the public land States, *then* the beneficiaries of this grant, had a claim against the United States so valid at law that it could be maintained by a mandamus proceeding, if initiated in the United States Supreme Court and directed specifically against the Commissioner of the General Land Office.

In view of such belief, two of the States, to wit: Iowa, whose interest in

the military bounty land warrant sales made in that State aggregated \$595,853 31, by its State agent, Hon. R. P. Lowe (ex-Governor and ex-Chief Justice thereof), and Illinois, whose interest therein aggregated \$881,006 60, by its State agent, Hon. W. W. Wilshire (ex-Representative in Congress from Arkansas), petitioned the United States Supreme Court for writs of mandamus to issue from it against said honorable Commissioner of the General Land Office, compelling him to state an account that would include all military bounty land warrant sales made in said two States by the United States. These two gentlemen, therefore, as State agents for said two States respectively, under the authority of their respective States, representing the same interests before Congress in this Senate Bill No. 67, and whose compensation, like mine, was to be contingent on success, that of Governor Lowe being one third ( $\frac{1}{3}$ ) of such sums as he might recover—and whose relation to this subject-matter is set forth in a paper, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 13—prosecuted said mandamus proceedings.

I consulted with these gentlemen as to their view of the propriety of my intervening in behalf of the State of California in this proceeding; but it was their judgment that as California did not occupy that same legal relation to the subject-matter, such as Iowa and Illinois did, or such as would strengthen the general case before the Court, therefore I concluded that it would be unwise to intervene, and hence limited my efforts in aiding these two State agents in all that promised a successful result. The State of Alabama, having a legal status in the matter, intervened through her own State agent.

This judicial proceeding resulted in a denial of the writ of mandamus, as petitioned for, and as will more fully appear from copy of the order of dismissal of said petition, hereto attached and made a part hereof, and marked Exhibit No. 14.

During the Forty-seventh Congress Senator Farley's said Senate Bill No. 311 was favorably reported on twentieth February, 1882, from the Senate Committee on Public Lands; and Representative Berry's House Bill No. 61 was ordered to be favorably reported to the House, when its Public Land Committee should be called for reports, but which call was never made, so that the Forty-seventh Congress adjourned leaving the said Senate bill on the Senate calendar unacted on, though favorably reported; and no further action was had on this measure in the House other than that hereinbefore stated.

In view thereof, and of the fact that the proceedings before the United States Supreme Court had proven equally barren of beneficial results, I renewed my efforts in behalf of this measure before the Forty-eighth Congress, when I again prepared two (2) bills, one of which, to wit, Senate Bill No. 796, was, at my request, introduced on December 18, 1883, in the Senate by the late Senator, Hon. John F. Miller; and the other, to wit, H. R. No. 111, was, at my request, introduced on December 10, 1883, in the House by the Hon. Barclay Henley, and copies of which bills are hereto attached and made a part hereof, and marked Exhibits Nos. 15 and 16. Senator Miller was requested by me to take charge of this measure in the Senate at this time, in consequence of the fact that Senator Farley, who had had charge thereof during the Forty-seventh Congress, was absent from Washington sick.

Prior to this date it occurred to me that, as I had been diligently at work for a period of about five years in endeavoring to secure favorable action, in season and out of season, for this and other California measures, and as yet no action had been taken by the Legislature of California either to

ratify and validate my appointments, or to determine and fix the compensation that I should receive in any of these premises, and believing that it was at least due me and the people of California that this matter should be now considered, and fully acted upon, and definitely disposed of, and not be left in doubt till my labors should be finally completed, and, if successful, that I should be *then* compelled to run the gauntlet of a hungry lobby sometimes said to be found outside the doors of a legislative body, and also said to be often composed of blackmailers, or unscrupulous and impecunious dead beats, who unfortunately, it is said, are at times successful in defeating meritorious measures, and who, some persons believe, allow action on private claims before a Legislature only on their own terms, I deemed it more prudent, rather than risk being placed in any such condition, to have this matter brought fully to the attention of the Legislature for its consideration and final action.

This subject-matter, with others relating to me, was, therefore, brought to the attention of the Legislature of California at its session in January, 1883, by Hon. George C. Perkins, Governor of California, in his concluding message to the Legislature, and also by the State Surveyor-General, Hon. James W. Shanklin, in his final annual report to Governor Perkins, and which references of said officials are hereto attached and made a part hereof, and marked Exhibits Nos. 19 and 20. The Legislature of California having maturely considered the entire subject-matter in its appropriate committees of each of its respective Houses, and also by each of its respective bodies as a whole, finally passed a resolution on the third day of March, 1883, ratifying and confirming, among other appointments, the one so conferred upon me by State Surveyor-General, Hon. William Minis, and did at the same time determine upon and fix in a contract, the exact compensation I should receive in these premises, copy of which action of the Legislature is hereto attached and made a part hereof, and marked Exhibit No. 21.

My appointment so theretofore made, having been thus ratified and confirmed on March 3, 1883, by the highest power known to the State, and my compensation in the premises having been thereby fixed in a legislative contract, I proceeded with renewed diligence to secure for the State the best results possible in these premises, and which results, during the Forty-eighth Congress, consisted in a favorable report being made in behalf of the measure both by the Senate and House Committees on Public Lands, copy of which report (No. 1969) is hereto attached and made a part hereof, and marked Exhibit No. 22.

Notwithstanding having thus received said favorable reports in both Senate and House in behalf of this measure, fearing that we would not secure any final separate action on this claim in the form of an independent bill, as it was now getting late in the session, it occurred to me, in view of such favorable action by the Senate Committee on Public Lands, that the Senate would possibly favorably entertain a proposition to incorporate a provision in the General Deficiency Bill, by way of an amendment thereto, to cover the amount of said claim as same existed on June 30, 1883.

With this object in view I prepared an appropriate amendment to the House Deficiency Bill No. 7235 of the first session of the Forty-eighth Congress, after said bill had reached the Senate, that would cover this proposition, and at my request the late Senator John F. Miller, on June 16, 1884, introduced the same in the Senate, and had it referred to the Senate Appropriation Committee; copy of which amendment is hereto attached and made a part hereof, and marked Exhibit No. 22 $\frac{1}{2}$ .

But the Senate Appropriation Committee failed to give the same any favorable action, so that, notwithstanding sundry efforts made on my part



in these premises, I found that it was impossible either to reach or take up in either the Senate or House, this proposition, either as independent bills or as an amendment to an appropriation bill; therefore, the Forty-eighth Congress adjourned without any action on either thereof, other than as herein reported; and both of said bills were on the calendars of Senate and House on the day of final adjournment, and both with a favorable report.

When the Forty-ninth Congress convened I again renewed my efforts in behalf of this same measure, by preparing two more bills to cover this same claim.

In view of the non-arrival of Senator Miller in Washington when the Forty-ninth Congress met, I awaited his arrival, believing that he could take up in the Senate this measure, he having had charge thereof during the Forty-eighth Congress, but when he did arrive, and finding that he was unable to take his seat in the Senate, I thereupon brought this same matter to the attention of the Hon. Leland Stanford, who, on January 11, 1886, at my request, introduced one of said bills, to wit, Senate Bill No. 994, and Hon. Barclay Henley, on December 21, 1885, at my request, introduced the other of said two bills, to wit, H. R. No. 150, copies of which bills are hereto attached and made a part hereof, and marked Exhibits Nos. 23 and 24.

I thereupon prepared an argument to support each of said two bills, and filed same with both the Senate and House Committees on Public Lands, said argument covering about the same grounds as hereinbefore particularly described, and in due time both of said two bills were favorably reported upon, to wit, in the Senate, on the fifteenth of February, 1886, and in the House, on the tenth of March, 1886, copies of which reports, No. 994, are hereto attached and made a part hereof, and marked Exhibit No. 25.

An examination of this report will show, like Report No. 1969, in the Forty-eighth Congress, that said committees adopted quite *verbatim* in the arguments which I had submitted in behalf of this measure, including as their exhibits thereto to both of said reports, the eight (8) tables of statistics in full, as compiled by me and as hereinbefore described.

In due course of proceedings this Senate Bill No. 994 was reached in the Senate calendar, to wit, on May 18, 1886, on which day certain proceedings were had thereon in the Senate, copy of which proceedings is hereto attached and made a part hereof, and marked Exhibit No. 26.

Anticipating that action on this measure would be had in the Senate on May 18, 1886, I was present in the Senate gallery, and noticing what had taken place in regard to this measure, I immediately thereafter sought an interview with Senator Allison, to know his reasons or grounds of objection, and learned from him that he thought this Senate Bill No. 994 proposed to revive, *for California alone*, the provisions of the old Military Bounty Land Warrant Five Per Cent Senate Bill No. 67, and as hereinbefore referred to, and if such was its intention and purpose, he said he desired to submit an amendment to this bill, and such as would include or cover the case of his State of Iowa; but I informed him that this Senate bill was confined exclusively to proceeds of the *cash* sales of public lands in California, and that its object was solely to place the State of California on the same plane as was at that very time enjoyed by his State of Iowa.

Senator Allison thereupon promised me to look into this Senate Bill No. 994 at his first leisure, and if he found it to be as I stated to him it was, that he would not further object thereto. Later other certain proceedings were had in the Senate on this same bill, to wit, on June 8, 1886, copy of

which is hereto attached and made a part hereof, and marked Exhibit No. 27.

I never was officially informed of the cause of this later objection by Senator Plumb.

Thereafter, certain other proceedings were had, to wit, on June 19, 1886, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 28.

As Senator Allison had not objected the second time to the consideration of this measure in the Senate, when Senate Bill No. 994 was called up from the Senate calendar, I requested the Hon. Barclay Henley to accompany me on another interview to see Senator Allison, and to ascertain his reasons for his said objection to the consideration of this measure; and he informed Mr. Henley and myself, "that while he had no objection himself to this measure, on the contrary, he having duly considered the same, as he had promised to do, and that he favored this bill, yet as Senator Stanford was not present in the Senate on June 19, 1886, or in Washington City when this bill was called up, and as Senator Stanford had prior to his departure from Washington, expressed to him a desire to be present when this bill should be considered in the Senate, that out of respect to Senator Stanford's wishes so expressed, he therefore desired the measure to go over; only this and nothing more."

Thereafter other certain proceedings were had on this bill, on July 9, 1886, and a copy of which is hereto attached and made a part hereof, and marked Exhibit No. 29.

I subsequently learned that Senator Miller of New York, the last objector to this Senate Bill No. 994, had no special reasons for antagonizing the measure contained therein; but as the calendar on July 9, 1886, was being considered under the Senate's five-minute rule, he, thinking that the measure would lead to debate, preferred to have the measure "go over" rather than risk consuming time in its consideration.

And as on this occasion neither of the California Senators were present in the Senate, and as the session was drawing to a close, and as this last objection had the effect to carry this bill over in the list of "bills objected to" on the Senate calendar, which thereby and thereafter would require unanimous consent to call it up, unless that portion of the Senate calendar was under consideration, which it never was again during the session, I therefore determined, in view of all these premises, and to make one more last effort in the Forty-ninth Congress, and similar to that which I had made in the Forty-eighth Congress, to wit, through the Appropriation Committee, by having an amendment proposed to the Sundry Civil Appropriation Bill, and to secure this measure by a general amendment, and which, due to the absence of both the California Senators, I had submitted through Senator Mitchell of Oregon. Copy of this amendment is hereto attached and made a part hereof, and marked Exhibit No. 30.

The Appropriation Committee, however, considering this amendment as proposing new legislation so far as it would include California, deemed it not permissible under the rules of the Senate, and, in consequence, it failed to be incorporated in that or in any other appropriation bill.

I thereupon abandoned all hope of securing action on this measure during the last stages of the first session of the Forty-ninth Congress, but only when it was drawing to a final close. As any favorable action that might have been secured in the Senate for this measure at the first session of the Forty-ninth Congress on this separate Senate Bill No. 994, would have failed to receive any recognition in the House, and because by legislative tactics now fully known to the country, the House persistently refused to

consider any matters on any of its several calendars for more than a month prior to its final adjournment, and for such reasons it failed to take up or consider Mr. Henley's Five Per Cent Bill, No. 164, which had been favorably reported upon by the House Public Lands Committee by the Hon. Barclay Henley, and which bill so stood on its calendar on the day of its final adjournment, I have prepared, and now append hereto and make a part hereof, and marked Exhibit No. 31, a statement of the total cash sales of all the public lands in California made by the United States up to June 30, 1885, showing also the annual simple interest thereof for each year to June 30, 1885, which interest the State has thus far lost, and now continues to lose, at the rate of \$37,131 87 per annum.

This table shows that by the failure of prosecuting this claim prior hereto to a success, the State of California has lost, in simple interest alone, the sum of \$424,030 74.

I have thus, step by step, reported to you fully the successive proceedings had by the United States upon this measure during the last eight (8) years since I have had charge thereof as agent and counsel in behalf of the State of California; and I state without any fear of successful contradiction that it has not been due to any fault or laches of mine that the proceeds of this claim have not been as yet placed in cash among the funds of the people of the State of California in their State Treasury.

In conclusion, I beg to report that I shall hereafter renew my efforts in behalf of this measure, knowing as I do, and that which you will readily perceive, that the main work in these premises has already been done by me; and which work in due time must, in my opinion, eventuate in giving California all proper benefits of this meritorious proposition, the proceeds arising therefrom to be expended for such purposes as the Legislature of California may hereafter wisely determine.

And all of which is now very respectfully submitted.

JOHN MULLAN,  
Agent and Counsel for the State of California.

## No. 2. CALIFORNIA DIRECT TAX CLAIM.

In my capacity as State Agent and Counsel for the State of Oregon, I was called upon, in 1881, by Hon. W. W. Thayer, the Governor thereof, to represent and defend the interests of that State in the matter of its protest against that certain action of the accounting officers of the United States Treasury Department, at Washington, District of Columbia, which consisted in their crediting upon the books of the Treasury Department the earnings of the State of Oregon arising from the five per cent of the net proceeds of the cash sales of the public lands therein, instead of paying the same from time to time over in cash to said State, as the same were earned, the said earnings having been used as a *set-off to Oregon's quota of the direct tax levied under the Act of August 5, 1861*, upon said State by the United States, in the sum of \$35,140 66, and which quota the State of Oregon having assumed but failed to pay, had been treated by the United States as a *debt still due the United States by said State*.

In order to meet this Oregon case as it actually existed, it became necessary for me to carefully study the entire United States direct tax system, and all matters connected therewith; and also to ascertain the principle of

set-offs as then and still in vogue as a practice by the accounting officers of the Treasury, to whom I presented such arguments against such practice in the Oregon case as to me seemed valid, but without any successful result.

Having exhausted all executive remedy in this matter, I found it absolutely necessary, therefore, to go to Congress for adequate relief in regard thereto.

It was thus while familiarizing myself with these matters that I discovered a peculiar condition of things relating to the direct tax quota that had been levied upon the State of California, which, somewhat like that of Oregon's direct tax case, might be and I thought could be bettered, and which I was willing to undertake to do if duly authorized. Thereupon I brought the entire matter to the attention of Hon. George C. Perkins as Governor of California, who, after maturely considering the same, conferred upon me, on December 12, 1882, his authority to represent the interests of the State of California therein, and in a commission, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 1.

This matter was thereafter brought by Governor Perkins to the attention of the Legislature of California, in his last annual message to that body, copy of which reference has been heretofore appended, as my Exhibit No. 19 to my five per cent report, and to which reference is now made.

The Legislature, having had the subject-matter under its consideration, duly ratified and confirmed my said appointment, and determined upon and fixed in a contract the compensation that I should receive in the premises if successful; and copy of which action has been heretofore appended as my Exhibit No. 21 to my five per cent report, and to which reference is now made.

Having authority, therefore, from the State of California to represent her interests in all matters that related to the adjustment of her quota of the direct tax of \$20,000,000 levied on the several States under the Act of August 5, 1861, I proceeded at the first session of Congress that convened next after the date of my said appointment to bring this matter to the attention of Congress; and having at the same time full authority to represent similar interests of the States of Oregon and Nevada, I brought fully to the attention of their respective delegations in Congress all that was necessary to be known to them in these premises.

This subject seemed to me to divide itself naturally into two subdivisions:

*First*—To secure for each of said States a recognition of the principle that notwithstanding the expiration of the limitations of time named in the Act of August 5, 1861, which fixed June 30, 1862, and September 30, 1862, as the two dates prior to which, if payment of said tax was made, should entitle the States so paying the same to a rebate of a certain per cent, to wit, if paid prior to June 30, 1862, a rebate of fifteen per cent, or if not paid prior to June 30, 1862, but if paid prior to September 30, 1862, a rebate of ten per cent of the amounts so by them paid; and if paid after September 30, 1862, then no rebate was provided for in the statutes. Yet it seemed to me that if California, Oregon, and Nevada had paid or should pay their respective quotas of said direct tax even subsequent to September 30, 1862, and that without any expense whatsoever to the United States, that then and in that event each of said States should *in equity* be entitled to receive a rebate of full fifteen per cent on their respective payments, fifteen per cent having been estimated by the United States to be about the cost to the United States to be incurred to put its own Federal machinery in motion in the several States for the purpose of assessing, levying, and

collecting said direct tax; so that an equity, in my judgment, could be invoked, if it could be shown that this tax had been eventually collected from said States without the United States incurring any expense whatsoever in the premises.

*Second*—That as an examination by me of the records in the Treasury Department had disclosed the fact that some of the States had paid their full quota of this direct tax, while others had paid only a portion thereof, and while still others had not paid any thereof, that an equitable adjustment of the whole matter of this direct tax could be found by Congress enacting a law by which there should be refunded to each State the amount of said direct tax that it had already paid, and to release each State from thereafter paying any portion thereof which had not been paid, but which was still due and payable, and for which unpaid balance such State was being treated as a delinquent debtor upon the books of the Treasury Department.

For the purpose of securing the first of these two propositions, in behalf of California, Oregon, and Nevada, I prepared appropriate bills accordingly; and at my request each of the same was duly introduced in the Senate and House, and as follows, to wit:

Senate Bill No. 511, by Honorable James H. Slater, December 10, 1883; for Oregon.

Senate Bill No. 665, by Honorable John P. Jones, December 13, 1883; for Nevada.

Senate Bill No. 810, by Honorable John F. Miller, December 19, 1883; for California.

And in the House, as follows, to wit:

House Bill No. 108, by Honorable Barclay Henley, December 10, 1883; for California.

House Bill No. 953, by Honorable George W. Cassidy, December 11, 1883; for Nevada.

House Bill No. 1310, by Honorable M. C. George, December 11, 1883; for Oregon.

Copies of which bills are hereto attached and made a part hereof, and marked Exhibits 2, 3, 4. In support of said Senate bills, I prepared arguments and submitted same to the appropriate Senate committees to which the same had been referred for reports, and also to each of the Senators who had introduced same respectively, and a copy of which argument is hereto attached and made a part hereof, and marked Exhibit No. 5.

I also prepared an argument in support of said three House bills, and submitted same to the appropriate House committees to which the same had been referred for reports, and also to each of the members of the House who had introduced the same respectively; copy of which argument is hereto attached and made a part hereof, and marked Exhibit No. 6.

Finding that Senate Bills No. 511, for Oregon, and No. 655, for Nevada, had been referred to the Senate Committee on Claims, while Senate Bill No. 810, for California, had been referred to the Senate Committee on Finance, and having made, with the aid of the late Senator Miller of California, several ineffectual and unsuccessful efforts to secure a change of reference of said Senate Bill No. 810, for California, to the Senate Committee on Claims, from the Finance Committee, where I soon discovered that no favorable action would be had, but where it seemed to me unfavorable action was likely to arise, and desiring that Senator Miller should not be taxed with the responsibility of introducing two separate Senate bills, each having in view only one and having the same object, and to be referred to two different Senate committees, I therefore prepared a second bill, and which Senator Farley, at my request, introduced in the Senate on the

ninth day of May, 1884, to wit, Senate Bill No. 2191, for this same object, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 7.

This bill of Senator Farley was referred to the Senate Committee on Claims, my desire being to have one and the same committee report on all three of said bills.

These three bills, to wit, Senate Bills Nos. 511, 655, and 2191, were then referred to Senator Dolph for reports, and he, on May 14, 1884, submitted to the Senate his favorable report, No. 550, on each thereof, copy of which report is hereto attached and made a part hereof, and marked Exhibit No. 7.

By this time, and in view of my observations in seeing said Senate Bill No. 810 going to one committee and said Senate Bills Nos. 511 and 655 going to another and different committee, I concluded it would have been wiser in the first instance to have had only *one* bill in the Senate that would have included all the provisions contained in said three Senate bills; and only *one* bill in the House that would have included all the provisions contained in said three House bills; and so that all three should be considered at one and the same time by one and the same committee. With this object in view I therefore prepared a separate House bill that would include all the provisions contained in said three House bills, to wit, H. R. No. 108 and No. 953, and No. 1310, and at my request the same was introduced in the House on twenty-eighth April, 1884, by Hon. John R. Glasscock, H. R. 6772, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 7. I also suggested to Senator Dolph that when reporting back said three Senate bills that he would report one substitute for the whole, and in view of the character and merit of the subject of said bills and the lateness of the session rendering action on these bills as separate measures difficult if not impossible, to secure an order of reference of his said report from the Senate Committee on Claims to the Senate Committee on Appropriations; and Senator Dolph, therefore, acquiescing in my suggestion, when submitting his said report, submitted one bill as a substitute for said three Senate bills, to wit, Nos. 511, 655, and 2191, and in this form, on the fourteenth day of May, 1884, he submitted the same to the Senate as an amendment to be proposed to the General Deficiency Appropriation Bill, and asked its reference to the Senate Committee on Appropriations, and copy of which substitute and said amendment is hereto attached and made a part hereof, and marked Exhibit No. 8.

In this shape this measure to grant California, Oregon, and Nevada, respectively, fifteen per cent of their full quota of the direct tax, as levied upon them under the Act of August 5, 1861, passed the Senate, and thereafter went to the House for its action thereon. The House refused to concur therein, whereupon this bill was thereafter referred to a conference committee composed of three (3) members of the Senate and three (3) members of the House, and before which conference committee I appeared and renewed all the arguments in support thereof similar to those which I had hitherto submitted to the Senate and House committees, and finally, said conference committee agreed to recommend to their respective houses the passage of said measure, and which recommendation having been concurred in, said bill passed both Senate and House, and became a law on the seventh day of July, 1884.

In the House, on the other hand, we could not secure not only any favorable action, but, on the contrary, the general subject of direct tax legislation developed various antagonisms, but none of which seemed to me to rest on any valid foundation; but these antagonisms, such as they were,

were sufficient to prevent any final action thereon during the Forty-eighth Congress, other than herein stated. These antagonisms will be hereafter referred to by me when reporting upon the *second branch* of this direct tax subject.

This bill, granting California, Oregon, and Nevada a rebate of fifteen per cent on their full quota of this direct tax, having become a law on the seventh of July, 1884, I immediately thereafter requested the proper accounting officers of the Treasury to state an account in behalf of the State of California for the settlement of this claim. This statement was made on July 23, 1884, in Treasury Report No. 43,395, in the office of the Fifth Auditor, and confirmed by the First Comptroller of the Treasury on August 22, 1884; copy of all of which is hereto attached and made a part hereof, and marked Exhibit No. 9.

California's quota of this direct tax of \$20,000,000, levied under the Act of August 5, 1861, was \$254,538 67, and upon which she had paid in second quarter, 1862, as follows, to wit:

After September 30, 1862, to wit, on October 7, 1862, the sum of .....	\$63,839 31
And during first quarter 1863.....	183,606 10
Making a total payment only of.....	\$247,445 41
Leaving unpaid and due on October 8, 1875, the sum of.....	7,093 26

In evidence whereof see letter of Hon. C. C. Fairchild, Acting Secretary of Treasury, dated July 14, 1886, inclosing the manuscript certificate of Settlement No. 10,813, made seventeenth March, 1874, by Fifth Auditor, and confirmed eighth October, 1875, by the First Comptroller of the Treasury, and hereto attached and made a part hereof, and marked Exhibit No. 10.

This sum of \$7,093 26 due the United States by the State of California, and unpaid at the date of the said settlement made in said Report No. 10,813 (see manuscript certificate), by Fifth Auditor of the Treasury, March 17, 1874, and confirmed by First Comptroller October 8, 1875, had been on February 8, 1884, reduced to \$6,597 54, by crediting California with the sum of \$495 72 on account of the "*Modoc Indian war claim*" (and to which full reference will be by me hereafter made in my Report No. 3 on California's Modoc Indian war claim), and which reduction will fully appear from Settlement No. 39,283, made February 7, 1884, by the Fifth Auditor, and on February 8, 1884, confirmed by the First Comptroller of the Treasury, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 11.

Therefore, on July 7, 1884, the date of the passage of this fifteen per cent rebate bill, the State of California was still indebted to the United States on account of the balance due on her quota of this direct tax, in the sum of \$6,597 54, and as fully appears in said Settlement No. 43,395, and made by the Fifth Auditor on twenty-third July, 1884, and confirmed by the First Comptroller on twenty-second August, 1884, same being my Exhibit No. 9 herein.

In making this final settlement between the United States and the State of California, the first thing, therefore, done by the Fifth Auditor of the Treasury, was to credit the State of California with fifteen per cent of her whole quota of said direct tax, to wit, \$254,538 67.

And, which fifteen per cent thereof was and is.....	\$38,180 80
And to thereafter deduct therefrom the amount of said balance of.....	6,597 54
Leaving due California by the United States a cash difference of .....	\$31,583 26

And for which a draft upon the Sub-Treasurer in San Francisco, to the order of the Governor of California, was delivered to me by the Secretary of the Treasury, and which was by me delivered to the Governor of the State of California in August, 1884, and the proceeds whereof (less the commission due me, and as fixed by my contract with the Legislature on March 3, 1883) were duly paid by you into the State Treasury; and as fully appears in your message to the Legislature, dated January 5, 1885, extract from which covering this special reference is hereto attached and made a part hereof, and marked Exhibit No. 12.

In order that you may fully understand how, as late as October 8, 1875, the State of California became indebted to the United States in the sum of \$7,093 26 on account of her quota of said direct tax, I desire to report that the State of California having, under the Act of her Legislature approved April 12, 1862, assumed the responsibility of collecting and paying the whole of her quota of \$254,538 67 of the direct tax of \$20,000,000 levied by the United States under the Act of Congress approved August 5, 1861 (U. S. Statutes, vol. 12, page 296), and having provided, as she did, all the necessary and proper State machinery for levying and collecting the same, that prior to September 30, 1862, there had been collected of this direct tax, and paid into the State Treasury of California in *gold coin*, the sum of \$70,932 56½.

Hon. D. R. Ashley, then State Treasurer, and in possession of said \$70,932 56½ in gold coin, converted the same into greenback currency, and prior to September 30, 1862, made a tender of such currency to the United States Sub-Treasurer at San Francisco, California, in part-payment of California's quota of said direct tax. Said Sub-Treasurer, D. W. Cheeseman, Esq., knowing that this sum had been collected in gold coin, and not in currency, claimed that it should have been paid by Mr. Ashley into the United States Treasury in the gold coin in which it had been so collected. This Mr. Ashley declined to do, whereupon the question was referred to the honorable Secretary of the Treasury at Washington for decision, and that officer directed the Sub-Treasurer to receive the tax in currency, as it was so tendered.

But by the time this decision and order was received at San Francisco back from Washington, the thirtieth of September, 1862, had come and gone, and as this law authorized a rebate only in the event that an actual payment should be made *on or prior to September 30, 1862*, at the very latest, and as the money was not, as a matter of fact, actually paid over by Mr. Ashley to the United States until *after* September 30, 1862, to wit, on October 7, 1862, the United States refused to recognize the claim of the State of California to any rebate in the premises.

But Mr. Ashley, taking a different view, and asserting that the State of California was entitled, in his opinion, to a rebate at least of ten per cent on said \$70,932 56½, did himself deduct ten per cent thereof, to wit, \$7,093 25½, which he turned into the State Treasury, and the balance, to wit, \$63,839 31, he paid over to the United States as a first installment and in part payment of California's said direct tax quota. But the United States never recognized either this claim of rebate or this system of discount and of bookkeeping on the part of the State of California; but, on the contrary, the United States simply credited the State of California with the amounts of money which she had actually paid, to wit, said \$63,839 31, and subsequently, to wit, in 1863 (when the legal time within which *any* rebate could be claimed had fully expired, and that too without question), with a second payment of \$183,606 10, aggregating a total only of \$247,445 41, and the United States charged California with the amount she had

not paid, to wit, \$7,093 26, and which charge ever remained upon the books of the Treasury as a debt against the State of California due the United States until it was liquidated by having been paid and canceled by deducting this debt of \$7,093 26 from the two credits which I had been enabled to secure and collect for the State of California, and in the manner hereinbefore fully stated, to wit:

First—By the California Modoc Indian war claim in the sum of.....	\$495 72
Second—And so much of the fifteen per cent on \$254,538 67 as was necessary to make up the balance of said debt of \$7,093 26, to wit.....	6,597 54
Aggregating the sum of .....	\$7,093 26

And as has been fully set forth in the settlements hereinbefore referred to, and filed as exhibits. The explanation made by Mr. Ashley in regard thereto is hereto attached and made part hereof, and marked Exhibit No. 13. From Mr. Ashley's own report you will therefore perceive that he made the effort to secure for California a rebate of ten per cent on a payment of \$70,932 56 $\frac{1}{2}$ , stating that *that sum was all that could possibly be recovered or saved to the State of California in this direct tax matter*, but which claim the United States never allowed and never recognized, while it also fully appears herein that I made the effort to secure for California a rebate of fifteen per cent on the whole of her quota of \$254,538 67 of this direct tax, which I succeeded in recovering and collecting; and the same has already been paid into the State Treasury of California in the manner aforesaid, and all of which was had and done by me under the authority conferred by Hon. George C. Perkins when Governor of California, and duly ratified by the Legislature of California on the third of March, 1883, and as hereinbefore fully set forth.

#### SECOND.

The second subdivision in the adjustment of this direct tax matter, as I viewed the same, consisted in securing such legislation by Congress as should enable the Secretary of the Treasury to refund to each State such portion of this direct tax as it had paid, and to relieve any State from paying such portion thereof as it had not paid.

In order to accomplish these results, I prepared two bills, one of which, to wit, Senate Bill No. 795, was, at my request, introduced in the Senate on the eighteenth of December, 1883, by the late Senator Hon. John F. Miller; and the other, to wit, H. R. No. 110, at my request, was introduced in the House on the tenth day of December, 1883, by Hon. Barclay Henley of California.

A somewhat similar bill, to wit, H. R. No. 6047, was introduced by Mr. Price of Wisconsin, copies of which bills are hereto attached and made a part hereof, and marked Exhibits No. 14 and No. 15 respectively.

In support of these two bills I prepared arguments, and submitted the same to the proper committees having charge thereof, to wit, the Finance Committee in the Senate and Claims Committee in the House, and gave the members of the California delegation duplicates thereof, copies of which are hereto attached and made a part hereof, and marked Exhibits No. 16 and No. 17 respectively.

Said Senate Bill No. 795, at the request of Hon. W. E. Earle, State Agent for South Carolina, was referred to the honorable Secretary of the Treasury by Senator Hampton of South Carolina; and said House Bill No. 110, at my request, was referred to the honorable First Comptroller of the Treasury, by Hon. Barclay Henley of California, to secure the views of these two

officers, who in due time submitted to Congress terse reports thereon, copies of which are hereto attached and made a part hereof, and marked Exhibits No. 18 and No. 19 respectively.

The general subject-matter having thereafter been maturely considered in the House by its Committee on Claims, that committee, on the fourth day of February, 1885, made a majority favorable report, through Mr. Price of Wisconsin, to wit, Report No. 2486, Part 1, second session Forty-eighth Congress, and a minority report, Part 2, through Mr. Warner, copies of which are hereto attached, made parts hereof, and marked Exhibit No. 20.

It is due to the history of this case that I should here state that this direct tax matter having been referred to the House Committee on Claims, was by it referred to Hon. A. J. Warner, as a sub-committee to examine into and report thereon to the full committee. Thereafter I got Hon. Barclay Henley to accompany me several times to interview Hon. A. J. Warner on this bill, and I was soon convinced that he was not only not favorably disposed in the matter, but he finally had prepared an adverse report thereon, and which he finally submitted to his said committee and asked its adoption as the views of the majority of said committee. Discovering this fact, the friends of this measure were immediately interviewed, and the result was that Mr. Price of Wisconsin, a member of said committee and a warm friend of this measure, was selected by its friends to make a minority report, and to thereafter move its adoption as a substitute for Mr. Warner's majority report, all of which was done; whereupon Mr. Price's minority report was adopted and became the majority report of that committee, and Mr. Warner's report, which he had expected would be the majority report of said committee, instead thereof became the minority report, so that both reports and history of each are herewith submitted for your information.

But this majority report was made so late in the session—as Congress adjourned March 4, 1885—that favorable action thereon was a matter of legislative impossibility during the Forty-eighth Congress.

But sufficient, however, had already been done, by virtue of the foregoing showing, to disclose to Congress that to discriminate between those States that had assumed and paid their full quota of this direct tax, and those States that had neither assumed nor paid the same, or any portion thereof, was a distinction without a difference.

If Congress was vested with constitutional jurisdiction to levy and apportion said tax as made, then those States upon which it was levied were legally obligated to raise and pay the same, or failing so to do, then to submit to such legal penalties as were provided for in the Act of August 5, 1861, that directed the levy to be made, and not to do as Mr. Bennett of North Carolina desired to have done, to wit, to release the delinquent States from further paying up their quota of this tax, and, as provided for by him in a bill, to wit, H. R. No. 6713, by him introduced twenty-first April, 1884 (and without making any provision for those States that had already paid this tax) copy of which bill is hereto attached and made a part hereof, and marked Exhibit No. 21.

If, on the other hand, this direct tax was not constitutionally levied upon the several States, as States—as in some high quarters had been assumed and argued—then it seemed to me that fair dealing suggested that those States—like California, for instance—which had responded by paying promptly, and without questioning the constitutionality of the tax, or the regularity of the levy and collection, should now be refunded and reimbursed the several amounts they had so heretofore paid to the United States; and when this was done, *then*, in my judgment, it would be in



order to release the delinquent States from further paying their delinquent debts, *but not before*.

While the foregoing proceedings were being had in the House, we were not successful in securing any *direct* action upon Senator Miller's Bill No. 795, in the Senate; but yet, by virtue of an effort to have Congress pay the State of Georgia the sum of \$35,555 42, on account of an old revolutionary war claim, the attention of the Senate and of the country was called to this meritorious measure, and, as will appear in the manner following, to wit, on March 28, 1884, Senator Brown of Georgia introduced Senate Bill No. 1948. A similar bill, to wit, H. R. No. 4703, was introduced in the House by Mr. Hammond of Georgia, on February 5, 1884, both having this object in view.

A somewhat similar bill, to wit, Senate Bill No. 595, had been introduced on December 11, 1883, by Senator Colquitt of Georgia, and a report, Senate No. 124, had been made thereon by Senator Hoar, on February 6, 1884, and which bill proposed to reimburse the State of Georgia the sum of \$22,567 42, on account of expenses in that sum by her incurred on account of an old Indian war claim arising therein between 1795 and 1818, and which bill became a law, but the accounting officers of the Treasury, instead of paying over to Georgia in *cash* the sum thereby appropriated, simply credited that State with the amount thereof on the books of the Treasury, as a set-off against Georgia's quota of the direct tax then unpaid and delinquent, and as a payment *pro tanto* thereon, and hence the reason for the language used in Senator Brown's Georgia Bill, No. 1948, and Mr. Hammond's House Bill, No. 4703, *which proposed to repeal, and annul, and vacate any law, or ruling, or decision of the accounting officers of the Treasury that had undertaken, or should undertake, to use the money so appropriated as a set-off to said direct tax then delinquent and due by Georgia to the United States*, and copies of which Bills Nos. 1948, 4703, and 595, and Reports Nos. 124 and 752, are hereto attached and made a part hereof, and marked Exhibits Nos. 22 and 23.

Apparently so fixed had the House Judiciary Committee of the Forty-eighth Congress become in its conviction that some remedy was needed to adjust *by law* a practice of set-offs that had grown up *without law* among the United States Treasury officials at Washington, that a general bill, to wit, H. R. No. 7082, therefor, was reported from the House Judiciary Committee on the twentieth of May, 1884, by Mr. Hammond, as a substitute for H. R. No. 6867, together with a report thereon, to wit, House Report No. 1658, copies of which bill (H. R. No. 7082) and Report No. 1658 are hereto attached and made a part hereof, and marked Exhibit No. 24.

A favorable report, to wit, Senate Report No. 592, was also made by Senator Hoar on Senator Brown's Georgia Bill, No. 1948, on the twenty-eighth day of May, 1884, copy of which report is hereto attached and made a part hereof, and marked Exhibit No. 25.

It was during the discussion of Senator Brown's Georgia Bill No. 1948, and of the Report No. 592 that was made thereon by Senator Hoar on the twenty-eighth of May, 1884, that the acrimonious but celebrated debate between Senator Brown of Georgia and Senator Ingalls of Kansas occurred in the Senate on the twelfth of June, 1884.

Prior to said discussion in the Senate, Senator Dolph of Oregon, believing with me that said Senate Bill No. 1948, and said Senate Report No. 592 made thereon, secured a discrimination in favor of Georgia, which had not yet paid her quota of this direct tax, as against California and Oregon (among other States), that had paid the same, at my request submitted, on the twenty-eighth of May, 1884, an amendment to said Senate Bill No.

1948, having for its object *to place California and Oregon on the same plane as was then sought to be occupied by Georgia in said Senate Bill No. 1948*; copy of which amendment is hereto attached and made a part hereof, and marked Exhibit No. 26.

The discussion of this Senate Bill No. 1948 and the report made thereon led to a motion to recommit the same back to the Claims Committee, that had reported thereon, and an aye and nay vote having been taken thereon, it was carried, by ayes twenty-one and nays seventeen; but immediately after the vote had been taken it was discovered, and the point was raised, that a *quorum* of the Senate had *not* voted; and upon motion of Senator Ingalls therefor, the Senate adjourned; and as the Senate prior to this had agreed that when the Senate adjourned it should adjourn till Monday, the Senate thereupon adjourned till the following Monday, leaving this bill and the subject-matter to which it related as *unfinished business*.

This was on Thursday, June 12, 1884, and the Senate adjourned to the following Monday, June 16, 1884.

I had observed that this motion to recommit this Senate Georgia Bill No. 1948 was not accompanied with any instructions from the Senate, and it further occurred to me that this occasion was the opportune period at which the adjustment of this entire subject might be made general, by substituting the provisions contained in Senator Miller's general bill, to wit, Senate Bill No. 795, for those contained in Senator Brown's special Georgia Bill No. 1948. I immediately laid my views before Hon. W. E. Earle, State Agent for South Carolina, who had ever coöperated with me in the premises, and whose State had overpaid this tax, and hence as her State Agent was as anxious as myself for a satisfactory adjustment of this whole subject. Therefore, during the interval, Mr. Earle and myself held several interviews with Senator Brown of Georgia and the late Senator Hon. John F. Miller of California, having this object in view, and which, at our joint request, finally resulted as follows, to wit: in open Senate, before any further vote should be had on Senator Brown's Georgia Bill No. 1948, that Senator Miller should offer his Senate Bill No. 795 as a substitute for Senator Brown's Georgia Bill No. 1948, and that Senator Brown would agree to accept the same. This agreement was fully carried out, and on the following Monday, to wit, June 16, 1884, Senator Miller, in open Senate, submitted, by way of an amendment, his said Senate Bill No. 795 as a substitute for Senator Brown's Georgia Bill No. 1948, and which was duly accepted by Senator Brown and ordered to be printed and lay on the table; copy of which amendment and substitute is hereto attached and made a part hereof, and marked Exhibit No. 27.

The first session of the Forty-eighth Congress was now drawing to a close, and it adjourned without any further action on this measure, which stood on the calendar of the Senate in the form of unfinished business.

In view of what had then already taken place on said Senate Bill No. 795 and said House Bill No. 110, I deemed it proper and my duty to bring the same to the attention of the Legislature of California at its next session, to wit, in January, 1885; and for this purpose, I submitted a report thereon to your office. Thereafter, the Legislature, having had the matter under its consideration, did, on the third of March, 1885, pass Senate Concurrent Resolution No. 26, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 28.

Copies of this resolution having been forwarded to me by the honorable Secretary of State, under the seal of his office from Sacramento, were by me filed with the appropriate committee in both Senate and House, and given to the members of our California delegation in Congress.



A Presidential election having taken place when the short and last session of the Forty-eighth Congress convened, other matters seeming to engross the attention of that body, there was an evident disposition not to consider this measure. Surely the fact is that though every proper effort was made by me and other friends of this bill to secure consideration thereof, the Forty-eighth Congress finally adjourned without any definite action being had thereon in either the Senate or House other than hereinbefore stated.

In consequence thereof, when the Forty-ninth Congress convened, I renewed my efforts in this same direction, and with this object in view I prepared two bills, to wit: House Bill No. 164, and which, at my request, was introduced by Hon. Barclay Henley on twenty-first December, 1885; and also one substantially the same was introduced by Mr. Price of Wisconsin, on January 1, 1886, in H. R. No. 2776, in harmony with the Report No. 2486, which he had made on February 4, 1885, on this same subject from the Committee on Claims; and in consequence of the absence and illness, which ended in death, of Senator Miller of California, who had charge of this measure during the Forty-eighth Congress, as hereinbefore fully reported, at my request, Hon. Leland Stanford introduced the other of said bills in the Senate on the eleventh day of January, 1886, to wit, Senate Bill No. 995; copies of which bills are hereto attached and made parts hereof, and marked Exhibits No. 29, No. 30, and No. 31, respectively.

Senate Georgia Bill No. 1948, and House Bill No. 4703, having failed to receive in the Forty-eighth Congress any action in either the Senate or House, other than that hereinbefore described, were revived in the Forty-ninth Congress by the introduction by Senator Brown of Georgia, of Senate Bill No. 2457, which latter was favorably reported in Report No. 1138, by Senator George from the Judiciary Committee, on May 18, 1886; copy of which bill and report is hereto attached and made a part hereof, and marked Exhibits No. 32 and No. 33.

And by Mr. Hammond, by the introduction in the House of special bill, to wit, H. R. No. 1, and also by a general bill, to wit, H. R. No. 3, on December 19, 1885, and upon which bill, H. R. No. 3, a Report No. 35 was made from the Judiciary Committee, on the nineteenth day of January, 1886; copies of which bills and report are hereto attached and made parts hereof, and marked Exhibits No. 34 and No. 35 and No. 36, respectively.

The views contained in this House Report were antagonized by Mr. Earle and myself, and we were finally successful in securing a favorable minority report in the House on twenty-ninth January, 1886, on this direct tax matter, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 37.

When this Georgia Bill H. R. No. 3, was, on February 8, 1886, reached in the House for consideration, Mr. William E. Earle and myself again submitted a statement in writing in regard thereto, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 38.

Whereupon several friends of our view of this measure, to wit, Messrs. Price of Wisconsin, Taylor of Ohio, Culbertson of Texas, Ranney of Massachusetts, Hepburn of Iowa, and Little of Ohio, duly supported the same in arguments which will fully appear in Exhibit No. 39, hereto attached and made parts hereof.

In addition thereto, Mr. Price submitted his bill, No. 2776, as a substitute for said House Georgia bill, and Hon. John T. Little of Ohio, offered an amendment to Mr. Hammond's said Georgia bill, copy of which is hereto attached, and marked Exhibit No. 39.

In addition thereto, by special appointment made therefor, the views of Mr. Earle and myself were, on April 20, 1886, laid before Hon. J. R. Eden

of Illinois, Chairman of the sub-committee of the House Judiciary Committee having charge of this direct tax measure, in an oral argument; and with whom we submitted sundry written and printed statements on the night of April 20, 1886; and next day supplemented same with a written statement, copy whereof is hereto attached and made a part hereof, and marked Exhibit No. 40.

In the Senate, Mr. Earle and myself succeeded in having Senator Hampton (who had taken a great interest in Senator Miller's Senate Bill No. 795 of the Forty-eighth Congress, and who it was that wrote as aforesaid to Secretary Folger at Mr. Earle's request in regard thereto, which called out the Secretary's report thereon, and as hereinbefore filed as an Exhibit No. 18) introduce on May 24, 1886, a substitute for Senator Brown's said Georgia Bill No. 2457, copy of which substitute is hereto attached and made a part hereof, and marked Exhibit No. 41.

This substitute contained substantially all the matters contained in Senator Stanford's Senate Bill No. 995 and Hon. Barclay Henley's House Bill No. 164, heretofore filed as exhibits Nos. 29 and 31.

In this connection we called Senator Hampton's attention to the fact that the report of the Senate Judiciary Committee on Senator Brown's Georgia Bill No. 2457 rested on a *wrong theory*, and because from an examination by me made of the laws of the States of Georgia and Texas I found that both Georgia and Texas had, as a matter of fact, assumed the payment of their quotas of this direct tax, and Georgia had, under an Act of her Legislature, authorized the issuance of interest-bearing bonds with which to pay her quota of this direct tax, and as will fully appear from copies of the laws of Georgia and Texas thereon, hereto attached and made parts hereof, and marked Exhibits No. 42 and No. 43, respectively.

On July 14, 1886, Senator Hampton, in support of his substitute for Senator Brown's Georgia Bill, No. 2457, and which was substantially identical with the substitute which at my request had been offered in the Forty-eighth Congress by Senator Miller of California, as a substitute for Senator Brown's Georgia Bill No. 1948 in the Forty-eighth Congress, submitted an argument in support of this substitute, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 44.

As the accounts between the several States and the United States arising under the settlements had on this direct tax, were constantly changing, and thereby the *status* of each, in relation to this direct tax matter, at the end of every settlement was different from what it had been theretofore reported to be, and as this was particularly true in the case of the State of California, *which then owed nothing to the United States*, and as a considerable time had elapsed since Congress had been officially supplied with authentic data in regard to the exact amount of debt then due the United States by any of the States which had been reported as delinquent in the payment of their respective quotas thereof, I deemed it wise, whenever this measure should be next under consideration, that its friends in Congress should be in possession of the very latest facts in regard thereto; whereupon I prepared a resolution of inquiry, which, at my request, was introduced in the House by the Hon. Barclay Henley, in order to secure this information, copy of which resolution is hereto attached and made a part hereof, and marked Exhibit No. 45.

This resolution having been considered and modified by the appropriate committee, was transmitted to the honorable Secretary of the Treasury, who, on March 31, 1886, made a reply thereto, as set forth in House Executive Document No. 158, first session, Forty-ninth Congress (copy of which is hereto attached and made a part hereof, and marked Exhibit No. 46),

and which gives the *latest* published official information on this important matter.

While Senator Dolph of Oregon was willing, in the Forty-eighth Congress, to submit, and did submit, an amendment in the Senate to Senator Brown's Georgia Bill No. 1948, by which if, at that time, Georgia was to secure her \$35,555 42 *in cash*, that Oregon, under his said amendment, would also receive *in cash* her \$35,140 67, and as set forth in said amendment (copy of which has been heretofore attached and made a part hereof, and marked Exhibit No. 26), yet he was not so confident that the proposition contained in Senator Hampton's said substitute exactly suited the views or interests of the people of the State of Oregon, thinking, as he stated to me, "that while Oregon, under Senator Hampton's amendment, would secure *in cash* her \$35,140 67, that she already had paid as her quota of this direct tax, yet he also thought that in the end the *people of Oregon would be taxed to raise a sum larger than said \$35,140 67*. In other words, that he thought that Oregon, in the event of Senator Hampton's substitute becoming a law, *would have to pay out more money than the people of Oregon would get back*."

Learning, therefore, that Senator Dolph was liable to antagonize Senator Hampton's said substitute whenever it should be considered by the Senate, and deeming it my duty, as agent and counsel herein for the State of California, to answer in a proper manner, and at all proper times and places, all antagonisms to this general measure, as contained in said Senate Bill No. 995 of Senator Stanford, and in said H. R. No. 164, as introduced by Hon. Barclay Henley, whenever and wherever the same could be properly done, I, as late as July 20, 1886, having had several interviews with Senator Dolph thereon, submitted to him for his consideration an argument in support of the views by me herein before expressed, and directed especially against his impression thereon, then taking shape and form, and copy of which argument is hereto attached and made a part hereof, and marked Exhibit No. 47.

Though every proper effort was made by me to have this measure considered in both the Senate and House during the first session of the Forty-ninth Congress, yet there never seemed to me, or to any other friends thereof, to be that opportunity; when either body had the time sufficient, or the inclination towards the favorable consideration of this measure, to take up and maturely weigh the same, and, therefore, the first session of the Forty-ninth Congress adjourned with this measure on the calendars of both Houses in an unfinished condition, and in the manner hereinbefore more fully set forth.

I have thus, step by step, given you the history of this measure, beginning with the Forty-eighth Congress (before which date it had never before been considered in either House of Congress, and when considered in the Forty-eighth Congress, the same was had and done solely through my agency), and ending at the first session of the Forty-ninth Congress.

I make this report, thus detailed and specific, in order that you and the people of California may fully know all that has been done in regard to this particular claim; and in order that a full account of my stewardship and agency in these premises may become a matter of official record in connection therewith, and for future reference.

In conclusion, I beg to report to you that I shall hereafter renew my efforts in behalf of this measure, knowing, as I do, that the *main work in the premises has already been done by me*, and which work, in due time, must, in my opinion, eventuate in giving California all the proper benefits of this meritorious proposition, the proceeds arising therefrom to be ex-

ended for such purpose as the Legislature of California may hereafter wisely determine.

All of which is now very respectfully submitted.

JOHN MULLAN,  
Agent and Counsel for the State of California.

### No. 3. MODOC INDIAN WAR CLAIM.

In my capacity as State Agent and Counsel for the State of Oregon, I was called upon, in 1881, by Hon. R. P. Earhart, Secretary of State thereof, to represent and prosecute the interests of that State in the matter of its claim against the United States, on account of certain expenses by it incurred for the suppression of Indian hostilities on its southern border, *during the Modoc Indian war, in 1872, 1873, and 1874*. I discovered that the State of California, and certain of its citizens residing in Siskiyou and Modoc Counties therein, had also incurred sundry expenses in this same Modoc Indian war, *no claim for the payment of which had ever been urged by the State of California or by her citizens against the United States*; and which claims, though small in amounts, were in my judgment valid, and such as I thought I could secure if properly so authorized. Knowing, as I did then and do now, that no claim can be prosecuted or urged before the Treasury Department except by a party in *propria persona*, or by another acting therein under a written letter of authority or power of attorney, I therefore brought the entire matter to the attention of Hon. George C. Perkins, as Governor of California, who, after maturely considering the same, on March 7, 1882, conferred upon me his authority to represent the interests of the State of California and her people therein, and in a commission, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 1.

This matter was thereafter brought by Governor Perkins to the attention of the Legislature of California in his last annual message to that body; copy of which reference has been heretofore appended as my Exhibit No. 19 to my "*five per cent report*" herein, and to which reference is now made.

The Legislature of California having had the subject-matter under its consideration, duly ratified and confirmed my said appointment, and determined upon and fixed in a contract the compensation that I should receive in these premises if successful, copy of which action has been heretofore appended as my Exhibit No. 21 to my "*five per cent report*" herein, and to which reference is now made.

Having authority, therefore, from the State of California to thus represent all matters that related to the adjustment of its interests in these premises, I prepared a suitable bill to cover this claim, which, at my request, the late Senator, Honorable John F. Miller, on seventeenth March, 1882, introduced in the Senate, to wit, Senate Bill No. 1502. I therefore prepared an argument in support of said bill, and presented same to the Committee on Military Affairs, to which said bill had been referred for examination and report, and on twenty-second March, 1882, a favorable report, to wit, Senate Report No. 306, was made thereon by Senator Harrison. Copies of which bill and report are hereto attached and made a part hereof, and marked Exhibit No. 2.

I also prepared a similar bill for this same purpose, which, at my request, was, on the thirteenth day of February, 1882, introduced in the House by

Hon. C. P. Berry, to wit, H. R. No. 4244, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 3.

Senate Bill No. 145, limited as it was *exclusively to Oregon*, in order to provide for its Modoc Indian war claim, had theretofore been prepared, and at my request had been introduced in the Senate on the sixth day of December, 1881, by Senator Grover of Oregon, and which had been favorably reported upon on February 2, 1882, in Senate Report No. 114, copies of which bill and report are hereto attached and made a part hereof, and marked Exhibit No. 4.

At the date when this Oregon Senate Bill No. 145 had been introduced and reported upon in the Senate, it did not occur to me to suggest to Senator Miller that when said Oregon's Senate Bill No. 145 should be considered in the Senate to *amend same by incorporating therein a provision for California's Modoc Indian war claim*.

The said two bills, to wit, Senate Nos. 145 and 1502, were therefore called up and considered, and acted upon as *two separate measures*, and both of said two bills passed the Senate on March 27, 1882, but as two separate and independent measures.

When said two bills reached the House they were both referred to the House Committee on Military Affairs, before which committee I appeared as counsel and agent for both of said separate bills Nos. 145 and 1502, and suggested to said committee that these two bills might be appropriately considered together by *being consolidated*, and which could be done by adding to said Senate Bill No. 145, which then consisted of only one section, a *second section, that should cover the provisions contained in said California Senate Bill No. 1502*, and all of which was done; and thus amended by the House, said Senate Bill No. 145 was favorably recommended to the House, where it passed, and was returned to the Senate for its concurrence, which it secured, and also passed and became a law on the sixth day of January, 1883 (U. S. Statutes, vol. 22, page 399), copy of which is hereto attached and made a part hereof, and marked Exhibit No. 5.

This bill, authorizing the proper accounting officers of the Treasury to adjust the accounts of the State of California against the United States arising in California during the Modoc Indian war of 1872 and 1873, having thus become a law, I thereupon requested the statement of an account by the proper accounting officers of the Treasury, in behalf of the State of California, for the settlement of this claim.

The statement was thereupon duly made by the Third Auditor of the Treasury, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 6, and shows that *the United States was indebted to the State of California on account of sundry claims arising in said Modoc Indian war in the sum of \$495 72*.

But this sum of \$495 72, instead of being paid over *in cash* to the State of California, was credited to her upon the books of the United States Treasury Department by the proper accounting officers thereof, and *used as a set-off* and a payment, *pro tanto*, by the State of California to the United States on account of the sum of \$7,093 26, said sum being a debt then due the United States by the State of California on account of a balance arising in the settlement of the direct tax accounts between the United States and the State of California, and all of which fully appears in Settlement No. 39,283, made by the Fifth Auditor on February 7, 1884, believing, as they substantially stated, that all indebtedness arising under said Act of April 25, 1857, had been amply provided for and fully adjusted and confirmed by the First Comptroller of the Treasury on February 8, 1884, and

as appended as my Exhibit No. 11, to my report in the *direct tax claim* hereinbefore made, and to which reference is now made.

While the State of California did not receive the payment of this claim *in cash*, yet she did receive *full credit therefor on account of a debt unpaid, and then due by her to the United States*, and as herein fully set forth, so that the matter was as broad as it was long, in so far as California's financial relation with the United States was concerned; but I beg to report that the total sum claimed by the State of California, as due her as a State by the United States, was allowed, appropriated, and paid, by *giving her a credit for the full amount thereof*; and which adjustment, so made, thus finally terminated this particular claim, collected by me under the authority conferred by Honorable George C. Perkins, as Governor of California, and duly ratified by the Legislature of California, on the third day of March, 1883, as aforesaid.

It may be information to you to know that Congress, also, at that same time, by virtue of my efforts therein exercised in their behalf, under this same authority conferred upon me by Governor Perkins and the Legislature of California, made ample provision for the reimbursement of the payment of certain specific claims of sundry citizens, then living in Modoc and Siskiyou Counties, in California, and aggregating a total sum of \$3,945 61, which sum, together with said \$495 72, made a total aggregate of \$4,441 33, as named in said law.

Some of these allowances so provided for have been already paid to the citizens of California entitled thereto, while others remain still unpaid, but all of which will be paid by the United States whenever the beneficiaries of that legislation, if living, or their heirs if dead, shall duly present their claims and make their identity legally known to the proper accounting officers of the Treasury, at Washington City.

And all of which is now very respectfully submitted.

JOHN MULLAN,  
Agent and Counsel for the State of California.

#### No. 4. CALIFORNIA INDIAN WAR CLAIMS.

The examinations which I had made, and especially those made in 1881 and 1882, in connection with the Modoc Indian war claims arising in California and Oregon, in 1872 and 1873, brought me in contact with the general subject-matter of other California Indian and other war claims, some of which, by the United States, had been settled in full, some settled only in part, and some not settled at all. I had already had a limited experience before the California Legislature in 1872, 1874, and 1876, as attorney in behalf of the holders of certain California Indian war bonds and coupons, theretofore issued by her in payment of certain expenses that had been incurred therein, on account of Indian hostilities, and sufficient to convince me that the State of California—improperly, as I thought then, and think now—was in no mood to either pay or to recognize said claims.

Believing, therefore, in 1882, that the true, if not the only remedy of the State of California, and that left to those of her citizens who still held any valid evidences of these unpaid debts growing out of Indian and other hostilities in the State of California, and upon the borders thereof, lay in presenting the same fully and intelligently before the proper United States authorities at Washington City, I, in June, 1882, duly brought this entire

subject-matter to the official attention of her then Governor, Hon. George C. Perkins, who, after having maturely considered the same, authorized me to represent the interests of the State of California in all these premises; and in a commission, copy of which is hereto annexed and made a part hereof, and marked Exhibit No. 1, and which appointment so made, the Legislature of California, by its action had thereon third March, 1883, duly validated, ratified, and confirmed, and did therein fix the compensation that I should receive in these premises if successful; and, as will fully appear in copy of said action, and which has been heretofore filed by me as my Exhibit No. 21, in my report on the five per cent claim, and to all of which reference is now made.

No one, in my opinion, knew better than Governor George C. Perkins of the many efforts that had been made prior to 1882 to secure recognition, adjustment, and full payment of all these old California Indian war claims; and he also knew that most of the efforts that has theretofore been made in regard thereto, and for the adjustment thereof, either before the Legislature of California or before the United States authorities, had resulted in signal failures; and he also knew, as every intelligent man must know, that the longer any settlement looking towards the payment of these old claims was delayed, that the chances for success therein would diminish, and grow more and more doubtful year by year, and probably in the end fail *in toto*.

Governor Perkins, when a State Senator from Butte County in the Legislature of the State of California in 1872 (and before which Legislature and its proper committees I had appeared as attorney to represent certain claimants holding certain valid evidences of this old California Indian war debt, then and now unpaid and due said holders by the State of California), was made the Chairman of a joint committee of the Senate and House that had been created by the Legislature of that year to examine into and report upon the general subject of the California Indian war indebtedness as the same existed in 1872.

This joint committee made their full report to the Legislature on the twenty-first of February, 1872, copy of which report is hereto attached and made a part hereof, and marked Exhibit No. 2.

A bill in harmony with, and to carry out the recommendations contained in this report, was thereupon framed, and which bill passed the California Senate in 1872, but failed to pass the California Assembly. Thereafter other strenuous efforts made at the meetings of subsequent Legislatures to secure favorable action on this subject-matter had also all proved equally abortive and equally barren in favorable results.

I do not know in fact of any one subject-matter that has ever been brought so constantly, or pressed so frequently or so vigorously before the attention of the Legislature of California, or for so long a period of time—for this has been done certainly from 1852 to 1878—as this one subject of the indebtedness created by the State of California growing out of its Indian hostilities in early years, and as a reference to the messages of the several Governors of California will attest, and as the various resolutions passed by her Legislature, and reports of her State officers, will fully confirm. Extracts from some of these messages, and resolutions, and reports, are hereto attached and made parts hereof, and marked Exhibit No. 3.

A perusal of these last exhibits will serve to show, in part at least, the very unsatisfactory condition of the several branches of this claim of the State of California against the United States at the date when I took charge of these California Indian war claims. It appears that California, when not paying sundry of these claims *in cash*, as she did, made ample

provision for their ultimate payment by the issuance of interest-bearing bonds, and which were paid to individual claimants in full satisfaction of their claims against the State of California, and as provided for in the Acts of her Legislature, approved February 15, 1851, May 3, 1852, and also by the issuance of certain of non-interest bearing bonds, as provided for in the Act of the Legislature, approved April 25, 1857, and in Acts amendatory thereof and supplemental thereto.

Up to this date there are still afloat in the hands of *bona fide* holders and of the officers of the State of California (which last, though paid by the State of California, have not yet been paid by the United States), claims aggregating several thousands of dollars arising under each of the aforesaid Acts of February 15, 1851, May 3, 1852, and April 25, 1857.

Strange as it may appear, yet the fact is, that while the aforesaid joint committee of the Legislature of 1872 had been appointed to report upon the *full* history and *total* amount of *all* the then unpaid and outstanding indebtedness arising on account of Indian hostilities in California and upon the borders thereof, yet that joint committee, so well composed as it was, with the Hon. George C. Perkins as its Chairman, made no reference whatsoever to any of the indebtedness which was then outstanding and unpaid, and which arose under the Act of the Legislature approved April 25, 1857, and Acts amendatory thereof and supplemental thereto, but, on the contrary, confined their said report exclusively to so much of said outstanding and unpaid indebtedness as arose under the Acts of January 15, 1851, and May 3, 1852, only, and not otherwise.

In view of the fact that, as my labors in the past have been, and those in the future will be, directed to matters arising under *all* of said Acts, so too my report therefore will include a proper reference to all proceedings had under *each* and *all* thereof, as well as to those arising under such other and different special Acts and resolutions of the Legislature of California as have taken place therein between September 9, 1850, and the first of November, 1886, the date of this report.

In my efforts in 1881, as State Agent and Counsel for the States of Oregon and Nevada, it became necessary for me to secure for them appropriate legislation, by means of which they could be reimbursed for the expenses by them incurred, respectively, on account of the war of the rebellion; and which legislation had been made necessary by virtue of the provision contained in Section No. 3489 of the United States Revised Statutes, and which is as follows, to wit:

SECTION 3489. *No claims against the United States for collecting, drilling, or organizing volunteers for the war of the rebellion, shall be audited or paid unless presented before the thirtieth day of June, eighteen hundred and seventy-four. No claims for horses lost prior to the first day of January, eighteen hundred and seventy-two, shall be audited or paid unless presented before the thirtieth day of June, eighteen hundred and seventy-four.*

The States of Oregon and Nevada had permitted the thirtieth of June, 1874, to come and go without having presented to or filed with the proper United States authorities as Washington, D. C., under the Act of Congress approved July 27, 1861, any claim against the United States for the expenditure of money by them incurred during the war of the rebellion (United States Statutes, volume 12, page 276). At my request, therefore, and in view of the provisions of said Section No. 3489 of the United States Revised Statutes, on December 12, 1881, Senator Grover of Oregon introduced in the Senate, Senate Joint Resolution No. 10 for Oregon, and on December 13, 1881, Senator Fair of Nevada also introduced Senate Joint Resolution No. 13 for Nevada, and both of which joint resolutions were referred to

the Senate Committee on Military Affairs, of which Senator Grover was then a member, and he, on May 12, 1882, reported back to the Senate a bill, to wit, Senate Bill No. 1673, as a substitute for both of said two resolutions, and which bill had for its object, among other things, to provide for the examination, audit, and report to Congress of the expenses of said two States arising therein between fifteenth April, 1861, and date of the passage thereof, copy of which Bill No. 1673 and of his Report No. 575, made thereon May 12, 1882, is hereto attached and made a part hereof, and marked Exhibits No. 4 and No. 5.

Having discovered that the *State of California was in no better or different position in regard to her rebellion war claims than the States of Oregon and Nevada*, I, therefore, brought the same to the attention of the late Senator, Hon. John F. Miller of California, and who, on June 8, 1882, submitted an amendment to Senator Grover's said Senate Bill No. 1673, so as to include California. Other amendments having been made in the Senate to this Senate Bill No. 1673, and such as should include the States of Colorado and Nebraska, said bill passed the Senate on the eighth day of June, 1882, and went to the House, where it was still further amended so as to include the State of Kansas, and so amended, it passed the House on June 20, 1882, and went back to the Senate, where upon the motion of Senator Maxey of Texas, said House amendments were concurred in on the same date, June 20, 1882, and said Senate Bill No. 1673 became a law by the approval of the President, on June 27, 1882, copy of which law is hereto attached and made a part hereof, and marked Exhibit No. 6.

This law was broad enough to cover not only certain Indian war claims of California, Oregon, and Nevada, but also those arising in each thereof during the late war of the rebellion, and under this law I have heretofore filed the rebellion war claims, and Indian war claims, for the States of Oregon and Nevada, and certain Indian war claims and also the rebellion war claims of the State of California (but as to the latter, California's rebellion war claims, a full reference and report thereon will hereinafter appear in a separate paper).

In order to present to the United States authorities in proper form, all the evidences of all the expenses that had been incurred by the State of California on account of the Indian hostilities that had occurred therein, and for which provision had been made by the passage of this Act of June 27, 1882, it has been necessary for me to make annually a trip from Washington City to Sacramento, California, from 1882 to 1886, inclusive, and to there remain several weeks each time, in studying into the history of the legislation that has been heretofore had in regard to this subject by the State of California; and in examining into many thousands of papers and various records and books in the offices of the Governor, Controller, Treasurer, Secretary of State, and Adjutant-General; also to have made certified copies of such books, records, and other archives, which originals could not be spared from said offices, or being not of the classes I had been authorized by the Legislature to receipt for and use, when pressing said claims before the United States authorities, and such as were, in my judgment, necessary to have daily at hand in my office at Washington, for an intelligent presentation of these claims to said United States authorities.

These certified copies of said books, records, archives, and sundry papers have all been paid for at my own expense, aggregating quite a large sum, and made without any cost whatsoever to the State of California, and because the terms of the contract, made with me by the Legislature of California provided, that, whereas my fee was to be entirely contingent, and to be paid only in the event of my success; that the State of California under no cir-

cumstances should incur any expenses of any kind on account of this or of any of these other several claims; so that if the State of California in the end failed to secure any recognition and payment for any of these several claims, *she would not be at any expense in the premises, and all of which expense devolved upon me to meet and pay, and all of which I have done.*

The examinations by me made into these several claims, soon disclosed the fact that said Act of Congress, approved June 27, 1882, while ample to meet California's rebellion claims, was not adequate to meet fully all her Indian war claims, and because outside of the claims for the war of the rebellion, most of the war claims in California had arisen prior to fifteenth April, 1861, and for those Indian war claims arising prior to fifteenth April, 1861, said Act failed to make any provision, as said Act, by its own terms, was declared by the United States authorities to be limited exclusively to those claims that had arisen in California subsequent, and not prior to fifteenth April, 1861.

This condition of things I thereupon made known to your office by appropriate reports, whereupon you conferred upon me your authority to represent among other things, such of these California claims as might not have been covered by or included in any prior appointment (copy of said authority is hereto appended, and marked Exhibit No. 7), and which appointment so made, the Legislature of California, on the third of March, 1885, duly validated, ratified, and confirmed in Senate Concurrent Resolution No. 3, copy of which is hereto appended and made a part hereof, and marked Exhibit No. 8.

In order, therefore, to meet this new condition of things, I prepared an appropriate resolution, and presented the same to Hon. W. S. Rosecrans, then in Congress from California, who at my request, introduced the same in the House of Representatives on the twenty-fifth day of February, 1884, and which was referred to the House Committee on Military Affairs, and of which he was then Chairman. I thereafter prepared an argument in support of said resolution, and submitted the same to the House Committee on Military Affairs, whereupon the matter was favorably reported upon from said committee on March 18, 1884, copy of which resolution and Report No. 807, made thereon, are hereto attached and made parts hereof, and marked respectively Exhibits Nos. 9 and 10.

The phraseology of said resolution was slightly changed by said committee, and for reasons set forth in a letter to me from General W. S. Rosecrans, of January 21, 1885, original of which is hereto attached and made a part hereof, and marked Exhibit No. 11.

An examination of said Report No. 807 will show that said committee fully used my said argument as their appendix "B" in support of said resolution.

While urging this view of the case, I also prepared sundry other separate and independent bills to meet these same California Indian war claims, and at my request the same were duly introduced in the House and Senate, and as follows, to wit:

- H. R. No. 50, by Hon. W. S. Rosecrans, December 10, 1883.
- H. R. No. 69, by Hon. W. S. Rosecrans, December 10, 1883.
- H. R. No. 6099, by Hon. Barclay Henley, March 24, 1884.
- H. R. No. 6669, by Hon. Barclay Henley, April 21, 1884.
- H. R. No. 7975, by Hon. Barclay Henley, January 19, 1885.
- H. R. No. 8149, by Hon. Barclay Henley, February 2, 1885.
- Senate Bill No. 809, by Hon. John F. Miller, December 19, 1883.
- Senate Bill No. 811, by Hon. John F. Miller, December 19, 1883.
- Senate Bill No. 1917, by Hon. John F. Miller, March 24, 1884.



Senate Bill No. 1970, by Hon. John F. Miller, April 1, 1884.

Copies of which are hereto appended and made parts hereof, and marked Exhibit No. 11½.

In support of these sundry bills, I prepared and filed with the appropriate committees in both Senate and House, and the California delegation in Congress, sundry arguments, copies of which are hereto attached and made a part hereof, and marked Exhibit No. 12.

Notwithstanding frequent and often importunate efforts on my part to secure action on some of the bills in the House, and particularly by the House Committee on War Claims, to which most of the same had been referred, and though Mr. Tully of California was a member of the House War Claims Committee, I was unable during the whole of the Forty-eighth Congress *to even get said bills considered*. It is true, certain days were fixed by said committee at which it was agreed to hear me in an oral argument thereon, but when such days arrived said committee could not and did not muster a quorum of its members; and the consequence was that our California Indian war claims, no adequate provision of law then existing, went by the board, unacted on and unconsidered during the whole of the Forty-eighth Congress.

In this dilemma, I made the effort to secure a recognition of at least a portion thereof, by an appropriate amendment therefor to one of the appropriation bills; and with this object in view, I prepared an amendment, supported by proper correspondence, and which, at my request, was introduced by Hon. Barclay Henley, and duly submitted to the House Committee on Appropriations, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 13. But this effort bore no good fruit.

In the Senate the aforesaid Senate bills fared no better fate. Senator Miller's Senate Bill No. 809 was referred to Senate Committee on Military Affairs, and after sundry correspondence between that committee and the War Department that bill was unfavorably reported upon, and as will fully appear in Senate Miscellaneous Document No. 40, and Senate Report No. 158, first session Forty-eighth Congress, copies of which are hereto attached and made a part hereof, marked Exhibit No. 14.

The impossibility of holding such bills in the Senate after adverse action had been had thereon, is fully set forth in a letter to me by the late Senator Hon. John F. Miller, dated April 2, 1884, original of which is hereto attached and made a part hereof, and marked Exhibit No. 15.

Not set back by this unfavorable action, I prepared appropriate amendments to be proposed to the appropriation bills then pending in the Senate, and at my request the same were presented by Hon. Senators Farley and Miller, copies of which are hereto appended and made parts hereof, and marked Exhibits No. 16 and No. 17, respectively.

Prior to this date and in order to fortify myself with all official statistics needed in order to show to Congress just exactly the true history thereof, Hon. James T. Farley and Hon. C. P. Berry of California, and Hon. James H. Slater of Oregon, at my special request, made sundry calls upon the Treasury Department in regard thereto, and copies of the correspondence had thereon are hereto attached and made a part hereof, and marked Exhibit No. 18, same being:

1. Letter of Hon. C. P. Berry to Third Auditor, of December 23, 1882.
2. Reply of Third Auditor thereto, of January 3, 1883.
3. Letter of Hon. Secretary of Treasury, January 8, 1883, with a statement of Third Auditor, of January 8, 1883.

4. Letter of Hon. Secretary of the Treasury to Hon. James T. Farley, of January 15, 1881, with letter of Third Auditor, of January 11, 1881.

5. Letter of Third Auditor to Hon. James H. Slater, of January 24, 1883.

While the foregoing was being done in Congress, I also made two separate and distinct efforts before the Treasury Department to secure recognition of at least a portion of these claims, and duly submitted the same to the Third Auditor of the Treasury, even under existing laws; and with this object in view I filed with that officer classified abstracts of said claims, and supported same by vouchers in tabulated form and in large bound volumes, copies of which abstracts are too large to now appear herein as exhibits in this report, but which I now file in your office, and call them my Exhibit No. 19 to this report.

The results of the action had thereon by the Third Auditor is set forth in his letters to me of eighteenth August, 1885, and November 23, 1885, copies of which are hereto attached and made parts hereof, and marked Exhibits No. 20 and No. 21, respectively.

In order to throw official light upon a portion of these claims, and in order that the Senators and Representatives in Congress from California should coöperate with the State authorities in securing such legislation by Congress as should secure their favorable recognition, and ultimately their final payment, the Legislature of California, on March 30, 1878, adopted Assembly Joint Resolution No. 73, and under which the late Hon. W. B. C. Brown, on May 27, 1878, as Controller of the State of California, submitted to Hon. William Irwin, then Governor of California, an official report upon these California Indian war claims, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 22.

It will be observed that the late Controller Brown limited his reports to such claims and outstanding and unpaid indebtedness as had arisen under the Acts of February 15, 1851, and May 3, 1852; his report being as a matter of fact more silent than that of said joint committee upon such claims as had arisen under the Act of April 25, 1857, and Acts amendatory thereof and supplemental thereto. An impression in 1872 and in 1878, and even up to the time I took hold of these claims, seems to have existed, that all indebtedness arising under said Act of April 25, 1857, and Acts supplemental thereto and amendatory thereof, had been all fully adjusted, which is not the fact.

Having thus exhausted every proper effort for both an executive and legislative remedy in these premises during the Forty-eighth Congress, I thereupon, to wit, on January 20, 1885, submitted to you a report in writing, accompanied with a printed statement, that related exclusively to the cases that then existed under the aforesaid Acts of February 15, 1851, and May 3, 1852, reserving to myself the intention and duty to report to you at a subsequent date and in another report such claims as had arisen under other Acts of the Legislature of California.

As many of the matters by me presented to you in my said report are important to be known in connection herewith, I now append hereto a copy of said report and make the same a part hereof, and mark it Exhibit No. 22.

When the Forty-ninth Congress convened, I renewed my efforts in behalf of these same measures and in the manner following, to wit:

I prepared, and at my request there were introduced in the House of Representatives as follows, to wit:

- H. R. No. 153, December 21, 1885, by Hon. Barclay Henley of California.
- H. R. No. 155, December 21, 1885, by Hon. Barclay Henley of California.
- H. R. No. 5566, February 15, 1886, by Hon. Barclay Henley of California.
- H. R. No. 8732, May 10, 1886, by Hon. Barclay Henley of California.



H. R. No. 8149, February 2, 1885, by Hon. Barclay Henley of California. Copies of which are hereto appended and made a part hereof, and marked Exhibit No. 23.

In support of these bills I appeared before the House Committee on War Claims, by appointment granted me therefor, and submitted to said committee an oral argument, and on February 22, 1886, I further submitted a special argument in writing in support of said H. R. No. 5566, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 24.

Whereupon said War Claim Committee, on twenty-third March, 1886, submitted to the House a favorable report, to wit: House Report No. 1298 on said bill, H. R. No. 5596, copy of which bill as amended by said committee, and of its Report No. 1298 made thereon, are hereto appended and made a part hereof, and marked Exhibit No. 25.

It will be observed by the reading of said report, that said War Claims Committee recommended that California be granted nearly all that I had claimed in her behalf; the principal exception being that of *interest* on the principal she had borrowed or expended in these premises, and as I was then engaged in endeavoring to secure for California such interest as she had actually paid out on all of her war claim expenditures, and in a separate and independent bill (a report upon all of which will hereinafter more fully appear), I deemed it wise not to antagonize that particular recommendation of the War Claims Committee, but to await the proper time, and then meet the same whenever said separate bill for interest should be under consideration in either the Senate or in the House, and in the meanwhile to accept this action of the War Claims Committee, which at that time seemed to me to be the very best that I could secure at its hands.

While thus engaged in securing from Congress by appropriate and separate bills the most favorable report possible in behalf of these measures, I framed sundry letters of inquiry, which, at my solicitation, the Hon. Barclay Henley addressed to the proper officers of the Treasury Department, replies to which, under date of March 20, 1886, from Third Auditor, and June 22, and July 2, 1886, from the Assistant Secretary of the Treasury, are hereto attached and made parts hereof, and marked Exhibit No. 26.

Having thus secured a favorable report on the aforesaid H. R. No. 5566, and having also, and that, too, in an official form, been put in possession of such authentic information regarding some of these claims as might be appropriately used by the House Committee on Appropriations if it were disposed to use the same, I thereupon framed sundry communications of request, which, at my solicitation, the Hon. Barclay Henley addressed to the Hon. Samuel I. Randall, Chairman of said committee, the intention thereof being to secure, by a proper amendment to the appropriation bills, *provision to cover some of these claims*, copies of which communications are hereto appended and made parts hereof, and marked Exhibit No. 26½.

Failing to secure by this proceeding at the hands of said committee in the House that favorable recognition of these measures which I thought they were then justly entitled to receive, I thereafter renewed the same by similar efforts in the Senate, where, at my request, Senator Stanford, on sixth of April, 1886, submitted to the Senate Indian Appropriation Bill H. R. No. 5543, an amendment having this same object in view, copy of which is hereto appended and made a part hereof, and marked Exhibit No. 27.

At my request also, Senator Hearst submitted to the Deficiency Appropriation Bill H. R. No. 9726, an amendment also having this same object in view, copy of which amendment, together with a printed statement pre-

pared by me in support of said amendment so proposed by Senator Hearst, is hereto appended and made a part hereof, and marked Exhibit No. 28.

These efforts of mine in the Senate proved to be as barren of favorable results as had attended my similar efforts in the House, so that the first session of the forty-ninth Congress adjourned, leaving the legislation prepared and proposed to adjust these claims, and in the manner herein outlined, in an unfinished state. Progress, however, more than had ever before been made in regard thereto had been secured, and because the provisions contained in H. R. No. 5566 vests in the proper United States authorities power to examine, and audit, and pay all Indian war claims arising in the State of California and upon the borders thereof (including the redemption of certain California Indian war bonds), between September 9, 1850—date of the admission of California in the Union—to April 15, 1861, on which last named date the Act of June 27, 1882, would take up the remainder of such claims, to wit, those arising between April 15, 1861, and June 27, 1882, so that by these two Acts taken jointly, California would have ample authority of law under and by which to have, in time, duly examined and audited and paid all claims arising therein and upon the borders thereof between September 9, 1850, and June 27, 1882, and whether the same included Indian war claims or claims arising during the war of the rebellion, and which she has heretofore paid.

In addition to the foregoing, and in order that the State of California should be fully reimbursed for expenses by her incurred for the payment of *certain Indian depredation claims*, and in order that her citizens also might be fully reimbursed for expenses and losses of property by them incurred on account of various Indian depredations in California, and for which, as the several exhibits submitted herewith fully show, the Legislature has so often besought Congress to enact adequate legislation, in order that same be paid, and *all of which efforts* had up to this time proved fruitless, I prepared three bills, which at my request were introduced in the House of Representatives by Hon. Barclay Henley of California, to wit, H. R. No. 5209, on February 8, 1886, and H. R. No. 8080, and H. R. No. 8082, on April 19, 1886. Similar bills were also at my request introduced in the Senate by Senator Dolph of Oregon, and supported by an argument, the statistics of which were prepared by my associates, Messrs. Charles and William B. King, and myself.

After various efforts to secure action on these House bills by the House Committee on Indian Affairs, to which the same were referred, that committee granted Messrs. King and myself several audiences, where and when we submitted sundry oral arguments. That committee favorably reported a substitute for all of said bills and sundry others, all relating to the same subject, to wit, H. R. 9729, on the thirtieth June, 1886, with a favorable report, to wit, House Report No. 3117. Copies of all of which are hereto attached and made a part hereof, and marked Exhibit No. 29.

No action was taken on this measure in the Senate. It is therefore my high privilege to be enabled to report to you, that *for the first time in the history of Congressional legislation has any committee of either the House of Representatives or of the Senate ever recommended the passage by Congress of a general bill to meet and pay for losses sustained on account of Indian depredations throughout the United States.*

My own judgment ever has been, and now is, that the only proper way to secure relief for the State of California, and for those of her citizens who have sustained losses in this class of cases, was, not by a *special*, but by a *general* bill, and for this reason, in this case, and in sundry other claims

in which California had an interest in common with the other States, I thought the proper proceeding to be had was by *general legislation*.

In conclusion, I beg to report to you that I feel quite confident that in due time all California Indian war claims will receive full attention at the hands of the proper United States authorities, and wherefore I shall hereafter renew my efforts in behalf of these several measures, knowing, as I do, that the main work in these premises has already been done by me, and which work, in due time, must, in my opinion, eventuate in giving the State of California all proper benefits of these equitable claims, when the proceeds arising therefrom can be expended for such purposes as the Legislature of California may hereafter wisely determine.

All of which is now very respectfully submitted.

JOHN MULLAN,  
Agent and Counsel for the State of California.

#### No. 5. REBELLION WAR CLAIMS.

My examination into the general subject-matter of the rebellion war claims of the States of Oregon and Nevada, whose agent and counsel I for several years last past have been and still am, brought me naturally in contact with similar matters arising in the State of California.

Prior to November 27, 1879, not knowing that any appointment had been made by any officer, or by the Legislature of the State of California, to represent these California rebellion claims, I wrote to Hon. William Irwin in relation thereto, and in reply he told me he would consult with the Attorney-General (then Hon. Jo Hamilton) in regard thereto.

A long time elapsing, and not hearing further from either Governor Irwin or from Attorney-General Hamilton in regard thereto, on November 27, 1879, I wrote to Hon. James A. Johnson, then Lieutenant-Governor of California, and requested him to see Attorney-General Hamilton in my behalf in regard thereto. To this letter Hon. James A. Johnson replied on December 2, 1879, in a letter, original of which is hereto attached and made a part hereof, and marked Exhibit No. 1.

Following up the information contained in said letter, I had knowledge for the first time that the Legislature of California had, on March 1, 1872, by Senate Concurrent Resolution No. 36 (California Statutes 1871-1872, page 958), made provision for the presentation to the proper United States authorities at Washington of its rebellion war claims; and by it I also learned, that though seven years had come and gone, there had not been any presentation of said claims, or anything done in regard to same up to twenty-sixth February, 1881, when the Legislature of California passed a second, to wit, Senate Concurrent Resolution No. 12, in regard thereto (California Statutes 1881, page 100), copies of which resolutions and of the action had thereunder by Hon. Newton Booth and Hon. George C. Perkins, when Governors of California, are hereto attached and made a part hereof, and marked Exhibit No. 2.

Thereafter the provisions of Section No. 3489, U. S. Revised Statutes, came to my knowledge, and wherein it was provided as follows, to wit:

Section No. 3489. No claims against the United States for collecting, drilling, or organizing volunteers for the war of the rebellion, shall be audited or paid unless presented before the thirtieth day of June, eighteen hundred and seventy-four. No claims for horses lost prior to the first day of January, eighteen hundred and seventy-two, shall be audited or paid unless presented before the thirtieth day of June, eighteen hundred and seventy-four.

In view of the matters therein contained, I brought this subject-matter to the attention of the late Senator, Hon. John F. Miller, and who, to remedy this matter, in so far as California was concerned, moved, at my request, to amend Senator Grover's Oregon and Nevada Rebellion Claim Bill No. 1673, as hereinbefore reported, by inserting "California," so that by the passage of the Act of Congress of June 27, 1882, there was enacted ample provision of law by which all of California's rebellion war claims could thereafter be examined, audited, and reported by the proper accounting officers of the United States Treasury to Congress for final payment.

After the passage of said Act of Congress of June 27, 1882, under arrangements made between Hon. James E. Hale and Thomas M. Nosler and myself, I was placed in possession of all the papers, vouchers, and documents, and evidences in support of portions of these claims, which for ten (10) years had laid in Washington City boxed up, unacted on, unclassified, and unexamined for any purpose whatsoever.

Finding these claims in much confusion, and that many thereof were missing and many links of valid evidence needed to properly support the same for presentation to the United States authorities, and there being no evidence of payment filed with any thereof, and because the Controller's original warrants drawn in payment thereof, and upon which in nearly all cases are indorsed a proper receipt, *were not filed with any of these claims*, I thereupon called upon State Treasurer January to surrender to me such of these original warrants issued in payment of these claims as, having been paid and canceled, were then on file in his office.

The chief value of these paid and canceled warrants at that time was that they constituted *original evidence* to the United States of payment by the State, and should have been surrendered by the State of California as so many sub-vouchers to support her claim for reimbursement by the United States.

Mr. January, however, declined to accede to my request, and refused to surrender to me or to my duly authorized agent any of said paid and canceled warrants for such public use.

In the preparation, classification, and abstracting of and placing with each the exact evidence that pertained thereto, I had to proceed, therefore, *without* such original warrants, and until such time as the Legislature should next meet, and when its authority for the delivery to me of all such original warrants, and of any other original papers that I might need in the proper presentation of these claims would be invoked.

This matter was therefore brought to the attention of the Legislature that convened in January, 1885, and that body, after fully considering the same, did among other things, duly authorize the surrender to me of all said original warrants; and as will fully appear from copy of its action had in regard thereto on March 3, 1885, and which has been heretofore filed as my Exhibit No. 8, in my report on "*California Indian War Claims*," and to all of which reference is now made.

These warrants were subsequently got together, boxed, and sent by express to me, at Washington City, *at my expense*. Each warrant was thereafter duly placed with the particular claim to which it belonged, and in payment of which it had been issued by the Controller of the State of California. The work of the proper classification, and abstracting, etc., of all the evidences in support of this rebellion claim—involving, as it did, the handling and rehandling and careful examination of over 100,000 papers—has had my attention, with the aid of never less than three and sometimes that of five clerks, continually for the four years last past. I therefore now have the honor to report to you that, on the eighteenth day

of September, 1886, I duly filed all the papers, vouchers, warrants, and other evidences in support of the rebellion war claims of the State of California with the honorable Secretary of the Treasury, whose duty it is also made under said Act of June 27, 1882, to examine and report upon the whole thereof. (See copy of letter to the Secretary of the Treasury for September 18, 1886, and of affidavit therein referred to, and made a part hereof, and marked Exhibit No. 9.)

These papers occupy eight large packing boxes; the abstracts thereof alone comprise bound volumes, and which abstracts have been by me prepared on heavy sheets of paper, eighteen inches by twenty-three inches, and strongly and neatly bound in separate volumes; and all this too has been done *at my own expense*.

Duplicates of these several abstracts in twenty-one bound volumes, one each for Abstracts A, B, C, D, E, F, G, H, K, L, M, N, O, and three of P, and five of Q, have also been made by me, and all of which I now submit you herewith, and which volumes will constitute a permanent record in the proper State office in evidence of at least a part of the work that has been done by me in regard to these claims, and which possibly may prove of some value as books of reference whenever any matter in regard to any of these claims shall hereafter arise.

No injury whatsoever has occurred to the State of California by virtue of any delay while these papers were in my custody for examination and proper preparation prior to filing the same with the proper United States authorities, and because even had they been filed prior to the date when they were actually filed by me, no action whatsoever would have been had thereon, and because similar rebellion war claims, that over two years ago had been filed by me for the States of Oregon and Nevada, lay unacted upon in the War Department; and because of the allegation by Hon. Robert T. Lincoln, Secretary of War, that the aforesaid Act of June 27, 1882, under which said Oregon and Nevada claims were to be examined, imposed upon the War Office new and additional duties, without at the same time placing at his disposal new or additional force for this examination, and that he wanted Congress to appropriate the sum of \$25,000 to aid him to do this work, and in its annual estimates in 1884 and 1886 the War Department made a call for this \$25,000 for said purposes.

Learning, therefore, the cause of the non-action in the War Department on these claims, I called the matter to the attention of Senator Dolph of Oregon, who, on February 19, 1885, submitted an amendment to the Sundry Civil Appropriation Bill, to appropriate said \$25,000 for this purpose, but this amendment failed to secure any favorable action in the Senate.

I also on February 16, 1885, brought this matter to the attention of Hon. O. Welborn of Texas, in a communication, copies of which are hereto attached and made a part hereof, and marked Exhibit No. 24.

Nothing having been done in these premises during the Forty-eighth Congress, the matter was by me called to the attention of Senator Maxey of Texas, who, as a member of the Committee on Military Affairs, when the said Act of June 27, 1882, became a law, had taken much interest therein, and because of the fact that Texas was one of the States named in the said Act of June 27, 1882, and he had an interview with the Secretary of War, Mr. Endicott; whereupon the Secretary of War, on January 27, 1886, wrote Senator Maxey a letter, a copy of which is hereto appended and made a part hereof, and marked Exhibit No. 3; whereupon Senator Maxey, on the twenty-ninth of January, 1886, introduced in the Senate a bill to meet this special want, to wit, Senate Bill No. 1284, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 4.

No action having been taken on this separate Bill No. 1284 of Senator Maxey, and, appreciating as I did (probably even more than any other one person, for I now represented three of the States named in said Act of June 27, 1882, to wit, California, Oregon, and Nevada, that were then and are now interested in this proposed legislation) the importance of getting some early action by the War Department in these premises, I again brought this matter to the attention of Senator Maxey, who, at my request, on the first day of July, 1886, introduced an amendment to the Sundry Civil Appropriation Bill (H. R. No. 9478) to appropriate said \$25,000, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 5.

The Senate Committee on Appropriations would not recommend an appropriation for this particular sum, but did recommend an appropriation for this purpose of \$7,500, but which sum was, on July 24, 1886, upon the motion of Senator Allison of Iowa, increased to \$10,000.

When this particular amendment was reached in the Senate, on July 24, 1886, a long and acrimonious debate was had thereon, so much so that even said appropriation of \$10,000 came very near being lost, and as will fully appear from copy of said proceedings had thereon in the Senate, on the twenty-fourth of July, 1886, hereto appended and made a part hereof, and marked Exhibit No. 6.

Having discovered in the examination of these claims, that certain original evidence in a part thereof was wanting, and all of which, in my judgment, was necessary for the War Department to have and in order to validly support the same, and after diligent search made by me in Sacramento, aided by Controller John P. Dunn, and his assistant, J. M. O'Reilly, of the Controller's office, and by General Geo. Cosby, and his son, and by his assistant, Colonel Tobin, and by two State Treasurers and their assistants, and by the Secretary of State, and having failed to find the missing links of that evidence which was so necessary to have in my judgment, I deemed it proper to secure the passage of a law by Congress, whereby we could use such *secondary evidence* as might be available in these premises, and a bill for this purpose was therefore prepared by me, and at my request was introduced in the Senate, on December 13, 1883, by Senator Jones of Nevada, and favorably reported upon on January 13, 1885, by Senator Dolph, but which bill failed to pass, copies of which bill, No. 656, and report thereon, No. 984, are hereto attached and made a part hereof, and marked Exhibit No. 64.

Wherefore I renewed my efforts in the same direction in the Forty-ninth Congress, and at my request, Senator Dolph of Oregon, on December 8, 1885, introduced in the Senate, Senate Bill No. 71, and which was favorably reported upon in the Senate on February 3, 1886, and favorably reported upon February 17, 1886, in the House, in House Report No. 572, and became a law on the fourth of August, 1886. Copies of which bill and of said law are hereto attached and made a part hereof, and marked Exhibit No. 7.

You therefore have in the foregoing synopsis, a history of a portion of my efforts, covering a long period of time and accompanied with much labor of myself and of my assistants, all of whose services, together with the expenses necessarily incident to the preparation in proper form of these claims, have been all met, and all paid for exclusively *at my own expense*.

Immediately after the adjournment of Congress, to wit, on the eighteenth of September, 1886, I requested the honorable Secretary of War, in writing, to create the Board of three army officers, which the aforesaid law vested in him authority to do, and which Board was ordered on October

6, 1886, to be convened, and as will appear from copy of the War Department Order No. 282 issued therein, and now hereto attached and made a part hereof, and marked Exhibit No. 8.

When said Board shall have examined and considered the claims of the State of California, the results of their examination from time to time I have no doubt will be submitted to me, and my further action thereon will depend upon the *character* of their examination by said Board, and a report on all of which will thereafter be submitted by me to your office for its information, and that of the Legislature of California, and of such other parties as may be interested therein.

All of which is now very respectfully submitted.

JOHN MULLAN,  
Agent and Attorney for the State of California.

#### No. 6. CLAIM OF INTEREST EARNED BY THE STATE OF CALIFORNIA ON WAR CLAIMS.

My examination into the subject-matter of the several war claims of the States of California, Oregon, and Nevada disclosed the fact that said States had in some instances been compelled to *borrow money* with which to pay *cash* for some of these claims, and to pay *interest* on the sums so borrowed and so paid out on account of said claims, while in other instances they had *issued interest-bearing bonds*.

It therefore appeared to me that if these States had a valid claim against the United States for the reimbursement to them of the *principal* which they had respectively expended in the payment of those expenses which constituted a proper charge against the United States, that these same States also had an equally valid claim against the United States for the reimbursement to them by the United States of such *interest* as they had paid out when compelled to go into the money markets of the country to borrow money with which to pay said claims.

This proposition appeared to me to be both logical and equitable, and while it was true that Congress, when legislating on July 27, 1861, to reimburse the several States of the Union for such expenses as by them had been incurred during the war of the rebellion, *had not made any provision for the payment of interest on the principal therein provided for* in the event any State had to borrow said principal, and had not made any provision for the payment of interest in any of its other special acts that related to any one of these three States where said States had paid interest, yet it appeared to me that it was in all respects proper for me to endeavor to secure the enactment of a law by Congress by which this claim, which existed only in equity, *should be recognized by law*.

For this purpose I framed two special bills limited in their provisions to California, Oregon, and Nevada, one of which, to wit, Senate Bill No. 320, at my request the late Senator Hon. John F. Miller introduced in the Senate on fifth of December, 1883, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 1, and the other, to wit, H. R. No. 109, was also at my request introduced in the House on tenth December, 1883, by Hon. Barclay Henley, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 2.

These two bills, it will be perceived, covered interest for two classes of claims:

*First*—"Interest upon loans or money borrowed and actually expended

by them for the use and benefit of the United States during the late war for suppressing insurrection and rebellion."

*Second*—Interest upon loans or money borrowed and actually expended by them for the use and benefit of the United States on account of *Indian hostilities in said States and Territories*.

After these two bills had been introduced in the Forty-eighth Congress, I soon discovered that while there were a number of eastern members in that Congress who seemed willing to reimburse California, Oregon, and Nevada for interest they had paid out on account of the war of the "*rebellion*," yet these same men were not equally willing to reimburse these same States for interest where the same had been by them paid out on account of "*Indian hostilities*." In view thereof, and having maturely considered this subject from many points of view, and desiring as I did, to secure favorable action upon *both* of these propositions, and to avoid having these bills, as presented, being amended by leaving intact one, and striking out the other of said two provisions, and thereby jeopardize in the future the success of the one so stricken out, I deemed it best to proceed in two separate bills, the one to be limited to interest paid out on account of the rebellion war claims, and the other on account of Indian war hostilities, and in order that this measure for the payment of interest should have a general support, I deemed it wise to make both of said bills *general by applying to all States and Territories alike*.

I therefore prepared for this purpose two separate and independent bills, one of which, at my request, to wit, H. R. No. 2930, was on January 8, 1884, introduced in the House, *limited to Indian hostilities*, and a similar bill, to wit, H. R. No. 2463, on the same day, *limited to the war of the rebellion*, was, at my suggestion, introduced, and both referred to the House Committee on War Claims; copies of which are hereto attached and made a part hereof, and marked Exhibits Nos. 3 and 4.

In support of these several bills I prepared and had printed at my own expense appropriate arguments, and submitted the same to said Committee on War Claims, copies of which are hereto attached and made a part hereof, and marked Exhibits No. 5 and No. 5½.

At the same time I prepared, and had printed and submitted to each of the members of the delegations from California, Oregon, and Nevada, and of said committee, a circular letter, a copy of which is hereto attached, and made a part hereof, and marked Exhibit No. 6.

This War Claims Committee, having maturely considered the subject-matter, did on April 1, 1884, make a favorable report thereon, to wit, Report No. 1102, copy of which is hereto attached, and made a part hereof, and marked Exhibit No. 7.

For reasons before stated I thought it equally wise to proceed in the Senate by separate bills, but deemed it prudent not to have any action taken in the Senate *until after the House had acted thereon*. As soon as the House War Claims Committee made its said report on April 1, 1884, partly at my suggestion, a bill, to wit, Senate Bill No. 2000 (similar in all respects to H. R. No. 2364) was introduced in the Senate on April 5, 1884, and referred to the Senate Committee on Claims, and which committee, on May 28, 1884, favorably reported said Senate Bill No. 2000 in its Senate Report No. 590, copies of which bill and report are hereto appended and made a part hereof, and marked Exhibit No. 8.

In view of what had then already taken place on said Senate Bill No. 2000, and said House Bill No. 2364, I deemed it proper and my duty to bring the same to the attention of the Legislature of California at its next

session, to wit, in January, 1885, and for this purpose I submitted a report thereon to your office.

Thereafter the Legislature, having had the matter under its consideration, did, on fifth of March, 1885, pass Senate Concurrent Resolution No. 25, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 8½.

Copies of this resolution having been forwarded to me by the honorable Secretary of State, under the seal of his office, from Sacramento, were by me filed with the appropriate committees in both Senate and House, and given to the members of our California delegation in Congress.

The subject-matter of this interest claim of the State of California, I had prior thereto made known to your office, by appropriate reports, whereupon you thereafter conferred upon me your authority to represent it among other claims; copy of your said authority has been heretofore appended, as my Exhibit No. 7, in my report on "*California Indian War Claims*," and to which reference is now made, and all of which appointments so made, the Legislature of California, on third March, 1885, duly validated, ratified, and confirmed, in Senate Concurrent Resolution No. 3, copy of which has been heretofore appended as my Exhibit No. 8, in my report on "*California Indian War Claims*," and to which reference is now made.

Though every proper effort was made by me and by other friends of this measure to secure consideration of these bills and reports during the Forty-eighth Congress, that Congress adjourned without even considering the same; but both bills stood on the calendars of both the Senate and House on the day of the *sine die* adjournment of the Forty-eighth Congress with favorable reports.

When the Forty-ninth Congress convened I renewed my efforts in behalf of this same measure and in the manner following, to wit: I prepared three bills, and, at my request, the same were introduced, as follows, to wit, H. R. No. 163, by Hon. Barclay Henley, December 21, 1885, a *general* bill for interest on account of "*Indian hostilities*," and H. R. No. 152, by Hon. Barclay Henley, December 21, 1885, and Senate Bill No. 59, by General Cullom, December 8, 1885, *general* bills for interest on account of the "*War of the Rebellion*." Copies of which are hereto attached and made a part hereof, and marked Exhibit No. 9.

Said Senate Bill No. 59 was favorably reported upon on sixteenth December, 1885, by Senator Hoar, in Senate Report No. 2, copy of which is hereto attached and made a part thereof, and marked Exhibit No. 10. And the Senate favorably recognized the principles contained in said bills by reiterating the same thereafter during the first session of the Forty-ninth Congress in its Senate Report No. 183, made by Senator Hampton on March 3, 1886, in the "*Florida case*." Copy of which is hereto attached and made a part hereof, and marked Exhibit No. 11.

The position of the House of Representatives during the first session of the Forty-ninth Congress, on this subject-matter of interest, was rather *anomalous*, and because while the House Committee on War Claims reported said House Bill No. 152 *unfavorably*, and as will appear from copy of their said report thereon, to wit, House Report No. 560, made April 6, 1886, by Mr. Perry of South Carolina, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 12. The House Committee on Claims, in this same Congress, on four different occasions recognized the obligation of Congress to pay interest on similar claims, and they so recommended in four different reports from said committee, as follows, to wit:

*First*—In its House Report No. 303, made February 3, 1886, by Mr. Dougherty, in the Florida case.

*Second*—In its House Report No. 518, made February 13, 1886, by Mr. Shaw, in the case of the States of Maryland and Virginia.

*Third*—In its House Report No. 519, made February 13, 1886, by Mr. Trigg, in the case of the City of Baltimore, and the States of Massachusetts, New York, Pennsylvania, Delaware, Maryland, Virginia, and South Carolina.

*Fourth*—In its House Report No. 3126, made June 30, 1886, by Mr. Gal-linger, in the case of the First National Bank of Newton, Massachusetts. Copies of which are hereto attached and made a part hereof, and marked Exhibit No. 13.

It will be observed that this House Report No. 1560 nowhere meets the question of equity presented in said *Interest* Bill H. R. No. 152, as introduced by Hon. Barclay Henley. All there is of the report is: "That the rule of adjustment of the Treasury Department officials in regard to interest was correct." No one disputed that proposition *then*, and no one disputes it *now*. The accounting officers of the Treasury have to adjust all accounts according to the laws as they actually exist, and Congress not having enacted any law allowing interest to States for expenses of wars, such as California has heretofore incurred, the Treasury officials of course could not state an account for interest.

But the object of said H. R. No. 152 was not to declare that the accounting officers of the Treasury were right or wrong, and that was not the question before the War Claims Committee; but *the* question that was actually before them was, as to whether it was not equitable to refund or make to all the States payment for interest where the States had to pay interest, and this Report No. 1560 dodges that question, and which was the only one before the War Claims Committee. A perusal of this report shows that the matters therein contained did not express the unanimous sentiment of even that committee; and because a minority report was also made at the same time on the same bill by Mr. Lyman, a member of that same War Claims Committee, which is full of facts, authorities, and precedents, and wherein the prior action of that same War Claims Committee of the Forty-eighth Congress was not only referred to, but Mr. Rowell's report, No. 1102, made on H. R. No. 2463, in the Forty-eighth Congress, was bodily incorporated in said minority report.

Not only this, but even the action of the House Claims Committee of the first session of the Forty-ninth Congress, as by me hereinbefore referred to, was also favorably cited in said minority report.

When the Senate reached the aforesaid Senate Bill No. 59, it was considering its calendar under its five-minute rule, and as a bill of this magnitude could not be considered under any rule that limited debate to five minutes, this Senate Bill No. 59, under objection under said rule, "went over," and was never thereafter considered by the Senate; but when the Senate adjourned *sine die* this bill stood at the head of the Senate calendar.

For reasons hereinbefore stated on other of these claims, the House adjourned its first session without considering either this measure as an *independent* proposition, or even any of the other bills in which said House Reports Nos. 303, 518, 519, and 3126 had been made, and in which this measure of interest had been favorably recommended.

In conclusion, I beg to report to you that I feel quite confident that in due time interest on all California's war claims will receive full attention at the hands of the proper United States authorities, and wherefore I shall hereafter renew my efforts in behalf of this measure, knowing, as I do,



that the main work in these premises has already been done by me; and which work in due time must, in my opinion, eventuate in giving the State of California all proper benefits of this equitable claim, the proceeds arising from which can be expended for such purposes as the Legislature of California may hereafter wisely determine.

All of which is now very respectfully submitted.

JOHN MULLAN,  
Agent and Counsel for the State of California.

**No. 7. REFUNDING CALIFORNIA SUCH MONEYS AS SHE HAS  
HERETOFORE PAID AS FEES ON SELECTIONS OF AGRICULTURAL  
LANDS THAT HAVE BEEN CANCELED BY THE UNITED STATES;**

AND

**PAYING CALIFORNIA MONEYS THE UNITED STATES HAD  
RECEIVED FROM SALES, OR BY VIRTUE OF AN ESTIMATED  
VALUE OF LANDS WHICH HAVE BEEN OTHERWISE DISPOSED OF;  
BUT WHICH LANDS WERE GRANTED OR CONFIRMED TO HER AS  
SWAMP AND OVERFLOWED LANDS BY CONGRESS.**

My practice in land cases arising before the Interior Department at Washington, D. C., brought to my knowledge some time ago that the State of California having, or should have, paid fees at the rate of \$2 for selections of one hundred and sixty acres each, of lands in part satisfaction of sundry grants of agricultural lands heretofore made to her by Congress; and which selections having been not only not confirmed, but which for cause pronounced by the United States to be *valid*, in sundry cases had been canceled by the General Land Office; and it occurred to me that if a proper examination of the whole thereof should be made, it would clearly appear to what extent the United States had received money paid as fees by the State of California for such selections as had been so canceled. It also came to my knowledge that the United States had in some cases sold, and in other cases had *otherwise disposed* of sundry tracts of land, which in my opinion clearly were not the property of the United States to either sell or otherwise dispose of, and because I thought the same inured to the State of California, under her swamp land grant of September 28, 1850 (U. S. Statutes, vol. IX, page 519), or under her confirmatory grant of July 23, 1866 (U. S. Statutes, vol. XIV, page 218).

Thereupon I brought these matters to the attention of the State Surveyor-General, Hon. H. I. Willey, who conferred upon me his authority to represent the same in behalf of the State of California. Copies of my authority in these premises are hereto attached and made a part hereof, and marked as Exhibit No. 1.

This matter of fees having been brought to the attention of the Legislature of California, that body, after maturely considering the same, on March 3, 1885, duly acted thereon, as appears from copy thereof, filed as my Exhibit No. 8, in my report on "*Indian War Claims*," and to which reference is now made.

Armed, therefore, with this authority to represent the interests of the State of California in these premises, I thereupon proceeded to make a detailed examination of all the entries of these selections of lands hereto-

fore made by the State of California, and which had been canceled as aforesaid, in order to *segregate such of these selections which had been canceled* from those which had not been canceled (numbering in all as they do, a total aggregate of several thousand throughout the whole State—now subdivided into ten (10) United States Land Districts). It has been, and will in the future continue to be, necessary for me to carefully examine the one hundred and twenty-five volumes of tract books in which these entries have been posted and now recorded; and has been and will become also necessary for me to carefully examine into over two thousand monthly and quarterly reports of the several Registers, and particularly of the money returns of the Receivers of Public Money in California, in order to ascertain just what fees these officers have reported as having been by them received from the State of California on account of said selections of lands.

Under a rule laid down by the General Land Office in these cases, it has been made requisite that I should make up the claims of the State of California against the United States, in each particular instance of *cancellation*, by giving:

*First*—The number of the State selection that has been canceled.

*Second*—The character of the land grant under which said selection was made.

*Third*—The description of the land so selected.

*Fourth*—The land district in which was situate the lands so selected.

*Fifth*—The date when such selections were made.

*Sixth*—The date when the fees on such selections were paid.

*Seventh*—The amount of the fees so paid on such selection.

*Eighth*—The name of the officer receiving said fees for said selection.

*Ninth*—The date when such selections were canceled.

And all of which, where not heretofore done, will have to be done by me before the United States will undertake any examination in order to verify the accuracy of the claim so made, or before it will state an account for any sums that such an examination may disclose to be due the State of California by the United States on account thereof.

The foregoing requirements involve much time, care, and careful analytical examination of numerous records and papers, and is a class of work which cannot be made continuous, because many of these records are in daily use, and as it involves many months of labor, it is impossible for any one to confine himself exclusively to same.

In view thereof, my labors in this class of cases are not yet completed, so that I am unable as yet to report to you what sums are liable to be derived from this particular source. It is proper, however, that I should report to you that, whereas the United States now believe that the State of California is now indebted to them, in a sum now unascertained on account of sundry *valid* selections of lands upon which the fees as required by law have not heretofore been paid by the State of California, that I am liable to be confronted with a proposition on the part of the United States, that instead of paying over to the State of California in *cash* any particular sum which the results of my examinations may disclose to be due the State of California by the United States, herein, that the United States may deem it its duty to set-off such sum as a *credit* to such other sums as the United States may find to be due by the State of California on account of fees not heretofore by her paid, but which are still due the United States on account of other valid selections of lands, which have been heretofore



made by the State of California and allowed, or to be allowed, and confirmed, or to be confirmed, to her by the United States.

In regard to the second branch of this case, to wit, paying California those moneys which the United States have either received from *cash sales*, or due from an estimated value of those *otherwise disposed of*, and which lands were not the property of the United States to dispose of *at the date of such disposal*, but which lands were *then* the property of the State of California, and because the same were either originally granted by Congress to California in her Swamp Land Act of September 28, 1850, or which were confirmed to her on July 23, 1866, in the "Act to quiet land titles in California," and a claim to which the State of California has not heretofore asserted, or which claim thereto, if asserted, has been heretofore unsuccessfully maintained, or been declared against her.

I beg to report to you that I prepared a *general bill* to reach the remedy sought for this purpose, which at my request was, on January 11, 1886, introduced by the Hon. Barclay Henley, and referred to the House Committee on Public Lands, to wit, H. R. No. 3222, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 2, and which I supported with an appropriate argument before said House Public Lands Committee. This, and other bills having a somewhat similar object in view for other States, having been duly considered by that committee on March 17, 1886, it made a favorable report on the *general subject-matter* in House Report No. 1089, copy of which is hereto attached, and which, with said amended bill as reported, are now made a part hereof, and marked Exhibits No. 3 and No. 4.

This bill proposes to pay a *cash indemnity* to (among other States) the State of California, in all cases, for all swamp lands which, though granted and confirmed to her, have not heretofore inured to her benefit, and of which she has heretofore been deprived, and because *either of the sales, or of the location, or of the entry, or of the selection, or of the disposal of the same to or by some person or persons other than to or by the State of California*, the legal equitable grantee thereof.

The adjustment provided by said bill seems to me to be in all respects equitable, and, in my opinion, will in due time receive the favorable attention of Congress.

But the first session of the Forty-ninth Congress, seeming to have had its time so thoroughly engaged in *other matters*, this measure, though early and favorably reported upon to the House of Representatives, failed to receive either attention or recognition of that body, and because the calendar of which it constituted a part was never called during the first session of the Forty-ninth Congress, that adjourned August 6, 1886.

I shall hereafter renew my efforts in behalf of both of these two propositions, and in which much work has already been done by me, but in which in the future much more work will yet have to be done than has been done in the past, but which, when completed, will eventuate in giving the State of California all proper benefits arising therein, when the proceeds arising from these equitable claims can be expended for such purposes as the Legislature of California may hereafter wisely determine.

All of which is now very respectfully submitted.

JOHN MULLAN,  
Agent and Counsel for the State of California.

## No. 8. CONCLUSION.

In conclusion, Governor, I have thus endeavored, in the foregoing synopsis, to give you an accurate and as complete a history of the action that has heretofore been had in regard to the several claims of the State of California against the United States that have been intrusted to my agency, and such as I thought was necessary to enable you, and the people of California, to have a full understanding of the character and extent of each, and what proceedings have already been had in the past, or that may be necessary to be had in the future, in order to secure the proper adjudication and full payment of each thereof.

It has been no less to my personal interest than it has been to that of the public interest of the people of the State of California to secure the *very earliest adjustment possible* for all of these several claims at the hands of the Federal authorities; and because, under my contract with the State, my compensation consisted of a contingent fee only, and payable only in the event of success, the State of California not incurring any expenses of any kind in regard to any of the matters in anywise connected with the presentation, or the adjustment of any thereof.

Any delay, therefore, had in any of these premises, has not been of my creation, or due to any laches on my part; but such as they are, they seem to be inseparable from and generally attend all adjustments had by either individuals or States with the Federal Government where the *payment of money* is involved, or where the securing of adequate legislative machinery to pay the same has been found necessary.

I know that the belief is generally entertained and has been sometimes expressed, that all that is necessary to be done by the members of a State delegation in Congress is for them to ask the executive departments to state accounts, or to present proper bills of relief in Congress for their respective States, and that such departments or Congress *at once respond by granting the relief or the remedy sought*. My experience, however, and that of those who have had most to do with this class of cases, does not confirm any such belief. On the contrary, all the executive departments, and all the committees in Congress, demand that all claimants, be they individuals or be they States (and they are all treated equally alike in all matters of claims against the United States), should properly and fully prepare their respective claims against the United States, and support the same with all proper evidence, for neither the one nor the other will go out of their way to adduce evidence to favorably support the same, *though both often supplement such presentation with evidence intended to defeat such claims*.

It is therefore not to be expected that the members in Congress, either from California or from any other State, will convert themselves, either singly or generally, into special agents of their respective States to properly prepare, or to present, or to plead, or to argue the claims of their respective States against the United States, except it be in public debate upon the floor of the respective Houses, while such subject-matters are legitimately before the same for passage, or being considered in the Committee of the Whole House, or before such special committees to which the same may have been reported for full examination and proper report to the whole House.

As members of Congress they are the servants of the United States, and are not and cannot be made special agents for any State in any matter that must come before them to pass upon as legislators, and besides *none have the time and few even the disposition to so act*.

Besides, the delegation in Congress from California has been constantly changing, so much so that to-day there is *not a single member* in our California delegation, in either the Senate or in the House, who was in Congress at the time I took hold of these several claims. Some have retired from public life, while two of the Senators who took a most active interest in behalf of these several claims, to wit: Senators Miller and Farley, have died during this time.

It has been therefore absolutely necessary for some one, having both the knowledge of all the facts, and whose interest it has been made by the State to keep constantly before our delegation in Congress from California all the matters relating to the past history or status at any time of these several claims, and to present from time to time to them such suggestions as might seem to be needed to secure a proper understanding of all that might be necessary to favorably reach the end sought to be secured in all thereof.

This duty I have ever sought at all times to perform to the best of my ability, and whatsoever lack of evidence of this allegation on my part the foregoing reports and exhibits may disclose, will, I am confident, be fully supplied, if necessary, by every member of the California delegation now in Congress, or by any of its living ex-members, who have been by me kept fully advised of all that has been done in these several claims.

The exhibits appended to the foregoing reports will, I believe, fully supply any information not to be found in the body of any one thereof.

When the several claims that have been intrusted to my care shall have been finally adjusted, I shall then submit to your office full and final reports on each thereof, and, in the meantime, I would state that all the more valuable papers relating to these claims, when not in use by me in my office, and which have not as yet been filed by me with the proper departments, are safely and securely stored, at my own expense, in one of the best fire-proof safe deposits in this city, in order that no loss of any kind should occur thereto to the detriment of the trust that has been heretofore confided to my care by the people of the State of California in and under the several contracts as hereinbefore recited.

I am, Governor, very respectfully, your obedient servant,

JOHN MULLAN,  
Agent and Counsel for the State of California.

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## EXHIBITS

TO

## FIVE PER CENT CLAIM.

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**EXHIBIT No. 1.**

**CALIFORNIA STATUTES.**

(Page 353, for 1858.)

*Number XII—Concurrent Resolution asking of Congress a donation of five per cent upon the sale of public lands for school purposes.*

(Passed March 11, 1858.)

WHEREAS, It has been the policy of the Federal Government to donate to the States, on their admission into the Union, a percentage upon the sales of public lands within their territories for State purposes, in consideration of their exempting such lands from taxation, which policy was departed from [on] the admission of California, although such exemption was secured; therefore,

*Resolved by the Assembly, the Senate concurring,* That we do respectfully ask of Congress the passage of an Act donating to the State of California five per cent upon the sales of all public lands in the State, to be exclusively appropriated to school purposes.

*Resolved,* That our Senators be instructed and our Representatives requested to use their influence to secure the passage of such Act.

*Resolved,* That the Governor be requested to transmit a copy of these resolutions, together with a copy of the accompanying communication from the Superintendent of Public Instruction, to our Senators and Representatives in Congress.

**EXHIBIT No. 2.**

STATE OF CALIFORNIA, OFFICE OF SURVEYOR-GENERAL, }  
November 1, 1878. }

*Capt. JOHN MULLAN, San Francisco, California:*

DEAR SIR: I hereby appoint you Agent for the State of California, to secure from the United States, for the benefit of the State of California, the payment by the United States to this State, of the five per centum of the net proceeds of the sales of all public lands lying within the State of California, which have been sold by Congress after the admission of said State into the Union, after deducting all the expenses incident to the same, and to be deposited in the State Treasury for such purposes as the Legislature may hereafter direct, which amounts have been provided for and granted to the other States in the Union.

I shall recommend to the next Legislature that you be paid such compensation for your services in the premises as shall appear just and proper, and based upon the amount of moneys you may succeed in recovering for this State.

You will see that the total amount recovered, without any deduction of any kind whatsoever, shall be transmitted by draft, and not otherwise, by

the Hon. Secretary of the Treasury of the United States, to the Treasurer of the State of California. You will report to this office from time to time the results of your action in these premises.

WM. MINIS, Surveyor-General.

**EXHIBIT No. 3.**

[Copy.]

November 20, 1878.

**FIVE PER CENTUM OF THE NET PROCEEDS OF THE SALES OF THE PUBLIC LANDS, ETC., IN CALIFORNIA.**

*Hon. J. A. WILLIAMSON, Commissioner of the General Land Office, Washington, D. C.:*

DEAR SIR: I have the honor respectfully to inform you of my appointment as Agent for the State of California, to secure from the United States, for the benefit of the State of California, the five per centum of the net proceeds of the sales of all public lands in said State, which have been sold or disposed of by Congress since the date of the admission of said State into the Union, after deducting all the expenses incident to the same, etc. I have the honor to transmit you herewith a copy of my said appointment, which I request may be filed in your office.

I respectfully request to be informed by your office, at an early date, what amount of money may be now due the State of California from the United States, the same being the said five per centum, etc., under existing laws.

If in your opinion there is not anything due the State of California under existing laws and under said head of five per centum of the sales of public lands in California, then, and in that event, I further respectfully request that I may have access to such data and information now on file in your office as relates to said five per centum, as heretofore received by other States of the Union, such as will enable me to properly lay this subject-matter before Congress at an early date, and for the purpose of securing such beneficial legislation in behalf of the State of California as Congress may deem just and proper in the premises.

Very respectfully, your obedient servant,

JOHN MULLAN.

**EXHIBIT No. 4.**

[Copy.]

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, }  
WASHINGTON, D. C., November 29, 1878. }

JOHN MULLAN, Esq., Washington, D. C.:

SIR: I have to acknowledge the receipt of your communication of twentieth instant, inclosing a copy of your appointment as Agent for the State of California, in the matter of the claim for five per centum on the net proceeds of sales of public lands within her limits.

In reply, you are informed that no provision of law exists under which the State of California is entitled to any percentage on sales of public lands.

In the cases of other States, specific provisions of law exist, and in the

absence of such relating to the State of California, no account of the net proceeds arising from sales of public lands within the limits of said State has been kept.

Very respectfully,

J. M. ARMSTRONG,  
Acting Commissioner.

**EXHIBIT No. 5.**

WASHINGTON, D. C., December 10, 1878.

*Hon. J. K. LUTTRELL, U. S. House of Representatives, Washington, D. C.:*

DEAR SIR: I desire very respectfully to call your attention to the fact, that many of the States west of the Mississippi River, and some east thereof, have, under various Acts of Congress, heretofore received, and are still receiving from the United States, five per centum of the proceeds of the sales of the public lands of the United States situated within their borders.

Of the Pacific States, Oregon and Nevada are constantly receiving their five per centum of the proceeds of the sales of the public lands of the United States within their limits, as the sales thereof progress.

California has not, up to date, received any benefit from any such legislation in her behalf, and, in my judgment, there is no good or sufficient reason why she should not be so entitled, equally with the other States of the Union. Even-handed justice demands that she be accorded this. As a citizen of California, and acting in her behalf therein, I desire, therefore, to very respectfully bring this matter officially to the attention of yourself, and through you to that of our delegation in Congress, and in the name of said State, to request that you may, at an early date, introduce into the House of Representatives a bill, having for its object the securing to California this benefit. In connection with this subject I suggest, with respect, the propriety of the introduction by you of a resolution of inquiry, to be addressed to the Hon. Commissioner of the General Land Office, as to the names of the States that have received, and are still receiving, such benefit, and the Acts of Congress under which the States have received, and do still receive, the same, and the amounts of money already paid to each up to date under such Acts.

This information will be useful in guiding you and the friends of this measure aright in the premises.

I inclose you herewith a form of resolution and bill, such as will, I think, cover the subject-matter referred to, requesting your very early and careful attention to the matter.

I am, sir, very respectfully, your obedient servant,

JOHN MULLAN,  
Agent and Counsel for the State of California.

**EXHIBIT No. 6.**

I think a general bill that will include all those States that have not yet received this benefit, is better than one applying exclusively to California.

J. K. LUTTRELL.

**EXHIBIT No. 7.**

Forty-fifth Congress, third session. R. H. 6081. Printer's No. 6782.

In the House of Representatives. January 20, 1879—Read twice, referred to the Committee on the Public Lands, and ordered to be printed.  
Mr. Wigginton, on leave, introduced the following bill:

**A BILL**

*To grant to the State of California five per centum of the net proceeds of the sale of the public lands situate within said State.*

WHEREAS, The several States of Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, Missouri, Arkansas, Michigan, Florida, Iowa, Wisconsin, Minnesota, Oregon, Kansas, Nevada, Nebraska, and Colorado, constituting the entire list of public land States, except California, have each and all received five per centum of the net proceeds of the sales of the public lands situate within their limits respectively; and whereas, California is the only State of the public land States that has not received said five per centum. Therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That five per centum of the net proceeds of the sales of all public lands of the United States situate within the State of California, sold subsequent to the date of admission of said State into the Union, and which may hereafter be sold, after deducting all the expenses incident thereto, shall be paid to the State of California, and for the purpose of making or improving public roads, constructing drainage and irrigating ditches and canals to effect a general system for irrigating the agricultural lands in said State, and in the mode and manner as the Legislature of said State may establish and direct.

SEC. 2. That the Secretary of the Interior and Secretary of the Treasury are hereby authorized and directed to make such rules and regulations as shall execute the foregoing provisions, and upon the principles that have heretofore existed or do still exist in similar matters in any of the States aforesaid.

SEC. 3. This Act shall take effect and be in force from and after its passage.

**EXHIBIT No. 8.**

*Senate Concurrent Resolution No. 1, relative to the sale of public lands.*

[Adopted February 9, 1881.]

WHEREAS, The States of Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, Missouri, Arkansas, Michigan, Florida, Iowa, Wisconsin, Minnesota, Oregon, Kansas, Nevada, Nebraska, and Colorado, constituting the entire list of public land States, except California, have each received a certain percentum of the net proceeds of the sales of the public lands situate within their limits respectively; and whereas, California is the only State of the public land States that has not received any percentum; therefore, be it

*Resolved by the Senate, the Assembly concurring: First*—That the Legislature of California does hereby memorialize Congress to place the State of California upon the same footing, as regards the proceeds of the sales of all

public lands in the said State, as the other States named in the preamble; and to give California all the benefits and payments to which said States, or either of them, are entitled under all Acts of Congress heretofore passed, or that may hereafter be passed, and the same, when granted, to be dedicated to educational purposes.

*Second*—That our Representatives in Congress are hereby requested, and our Senators instructed, to vote for, and in all honorable ways endeavor to secure the passage of an Act of Congress granting this State five per centum for said purposes.

*Third*—That the Governor is hereby requested to forward a copy of this memorial to each Senator and Representative from California in Congress, for his information and favorable action in the premises.

**EXHIBIT No. 9.**

Forty-seventh Congress, first session. S. 311.

In the Senate of the United States. December 8, 1881.

Mr. Farley asked, and by unanimous consent, obtained leave to bring in the following bill, which was read twice and referred to the Committee on Public Lands:

**A BILL**

*Granting to California five per centum of the net proceeds of the sale of public lands in that State.*

WHEREAS, The States of Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, Missouri, Arkansas, Michigan, Florida, Iowa, Wisconsin, Minnesota, Oregon, Kansas, Nevada, Nebraska, and Colorado, constituting the list of all the public land States except California, have each received a certain percentum of the net proceeds of the sales of the public lands situate in their limits respectively; and whereas, California is the only public land State that has not received any percentum of the net proceeds of the sales of the public lands in said State; therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That there be and is hereby granted to the State of California five per centum of the net proceeds of the sales of the public lands which have been or may hereafter be made in said State, and the same shall be dedicated by said State to aid in the support of the public or common schools of said State.

**EXHIBIT No. 9½.**

Forty-seventh Congress, first session. H. R. 61. Printer's No. 61.

In the House of Representatives. December 13, 1881—Read twice, referred to the Committee on the Public Lands, and ordered to be printed.  
Mr. Berry introduced the following bill:

**A BILL**

*Granting to California five per centum of the net proceeds of the sale of public lands in that State.*

WHEREAS, The States of Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, Missouri, Arkansas, Michigan, Florida, Iowa, Wisconsin, Minne-

sota, Oregon, Kansas, Nevada, Nebraska, and Colorado, constituting the list of all the public land States except California, have each received a certain percentum of the net proceeds of the sales of the public lands situate within their limits respectively; and whereas, California is the only public land State that has not received any percentum of the net proceeds of the sales of the public lands in said State; therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That there be and is hereby granted to the State of California five per centum of the net proceeds of the sales of the public lands which have been or may hereafter be made in said State, and the same shall be dedicated by said State to aid in the support of the public or common schools of said State.

### EXHIBIT NO. 10.

Forty-seventh Congress, first session.

IN THE MATTER OF SENATE BILL NO. 311 AND H. R. NO. 61.

#### CALIFORNIA FIVE PER CENT BILL.

The object of Senate Bill No. 311, introduced in the United States Senate on December 8, 1881, by Senator Farley of California, and reported favorably to the Senate, and without amendment from the Senate Committee on Public Lands, February 20, 1882, by Senator Plumb of Kansas, is to place the State of California upon an equal footing with all other public land States, by extending to her the provisions of a law similar to existing laws relating to the five per cent of the net proceeds of the sales of the public lands of the United States in the several States. A similar bill (H. R. No. 61) was introduced in the House of Representatives, by Hon. C. P. Berry of California, on December 13, 1881, and is now pending before the House Committee on Public Lands.

Since the date of the organization of the Government of the United States to the present time, it has ever been its policy, *without a single exception*, when creating and admitting new States into the Union, to grant to said States some certain percentum of the net proceeds of the sales of the public lands therein.

The State of California was admitted into the Union September 9, 1850, and in the Act of Congress (U. S. Stat., vol. 9; p. 452) so admitting her, it was declared that she should be admitted on an equal footing with all the other States, in all respects whatsoever.

But Congress, in Section 3 of said Act of her admission, imposed upon said State the identical obligation and express conditions as then and hitherto imposed upon all new States, to wit: "That California should never interfere with the primary disposal of the public lands within its limits, and pass no law and do no act whereby the title of the United States and right to dispose of the same should be impaired or questioned; and that she should never levy any tax or assessment, of any description whatsoever, upon the public domain therein; and that the non-resident proprietors of said lands—citizens of the United States—should not be taxed higher than residents; and that all the navigable waters in said State should be common highways, forever free to all citizens of the United States, without tax, impost, or duty therefor."

Now, these conditions were quite identical with the conditions imposed by Congress upon other new States; and in consideration thereof, and for other good and sufficient reasons, Congress has ever granted to said new public land States a certain percentum of the net proceeds of the sales of the public land therein; the same to be expended either as Congress indicated in the granting Acts, or as the Legislatures of said States, with the consent of Congress, should best determine.

These grants by Congress have been made either in the Enabling Acts of said States or in their Act of admission, or by some subsequent legislation.

A table is hereto appended wherein are fully given the dates, volumes, and pages of the United States Statutes wherein Congress has extended to the several States this class of legislation, as applicable to all the so called *public land States*, and also to the thirteen original States. California was admitted into the Union without any Enabling Act. The public land laws of the United States were not extended to said State until March 3, 1853 (U. S. Stat., vol. 10, p. 244), and no sales of the public lands in said State were reported prior to July 1, 1857, and in the three years preceding the year of the rebellion the reported net proceeds of the sale of the public lands in said State aggregated only \$86,371 92, the five per cent of which is \$4,318 59. There was nothing in this small sum, and nothing in the surroundings of the Treasury Department of the Government of the United States at the beginning of or during the years of the late war, or even immediately subsequent thereto, that would seem to justify the State of California to request that a statement of an account with the United States Treasury Department be made by the United States Land Department in her behalf regarding this five per cent.

In view thereof, nothing was done in these premises until 1878, when all the circumstances having changed, the undersigned, as attorney in behalf of said State, requested the honorable Commissioner of the General Land Office to state an account to the United States Treasury Department, *under existing laws*, in behalf of said State, for her five per cent of the net proceeds of the sale of the public lands therein. This request was not complied with by said Commissioner, and because, as stated by him in writing, in reply to said request, that he was not vested with sufficient authority of law to state such an account, and would not be so enabled without additional legislation by Congress.

This last fact was thereupon duly communicated by the undersigned to the proper authorities of California, whereupon the Legislature thereof, by appropriate resolution, memorialized Congress on this subject, and that it take action thereon by appropriate and early legislation.

Copies of this memorial were duly sent to the California delegation in Congress, and are now matters of record, with the papers relating to this case now before both the Senate and House.

The California delegation in Congress have sought to execute the will of said State as expressed in said memorial, by securing the passage of either Senate Bill No. 311, or House Bill No. 61.

At the request of the undersigned, a copy of this memorial has been filed by the Hon. George C. Perkins, the present Governor of California, with the Chairman of the Public Land Committee in both the Senate and House, under the seal of the Secretary of State of said State, and the same now is a matter of record in both Houses of Congress. In order to show what has heretofore been done by Congress, by the General Land Office, and by the Treasury Department, in regard to the net proceeds of the sales of public lands in the several public land States, the under-



signed has prepared and now submits herewith, and as a part hereof, a series of tables, from No. 1 to No. 8, inclusive, which show at a glance the specific sums of money that any particular State has already received up to June 30, 1880, and the authority of law for the same. Tables Nos. 1, 3, 4, 5, 6, and 7 have been submitted by me to the honorable Commissioner of the General Land Office for examination and verification, and he has, over his own signature, certified that the same are correct. The original certified tables above named, have been by me delivered to Hon. Senator Farley of California, to be used by him, if needed, on the floor of the Senate when urging the passage of his said Senate Bill No. 311.

These tables show that the State of California would be entitled to receive up to July first, the sum of \$408,180 40.

This claim of the State of California, so long overlooked by Congress, is well founded in equity. Similar claims have never as yet been denied in any single instance to any of the public land States; but, on the contrary, have been invariably granted, and that, too, by prompt and adequate legislation of Congress whenever properly asked for.

California, through her Legislature has memorialized Congress that it enact appropriate legislation, by means of which she will be placed on an equal footing with the other public land States, and, as we submit, was intended and provided for in her Act of admission. It is respectfully submitted that her delegation in Congress, in both Senate and House, will be only executing the views and wishes of said State, and of the people thereof, as expressed in their State Legislature, by securing the passage of Senate Bill No. 311, now on the Senate calendar (Order of Business No. 256).

The matters herein contained have all been by me heretofore laid before the Public Land Committee of both Senate and House in support of this measure, and are now matters of record with the papers relating thereto.

In conclusion, I now very respectfully request that Congress may enact either of said bills into a law at the earliest date practicable.

Respectfully submitted.

JOHN MULLAN,

Agent and Attorney for the State of California.

1310 Connecticut Avenue,  
WASHINGTON, D. C., April 12, 1882.

TABLE No. 1.

*Statement of the Public Lands sold for Cash in the State of California, amount received therefor, and expenses incident to the sale thereof, by fiscal years, from July 1, 1857, to June 30, 1881, both inclusive.*

FISCAL YEARS.	Acres Sold.	Amount Received.	Expenses of Sale.
1858 .....	675.07	\$843 81	\$8,503 21
1859 .....	105,585.70	133,432 32	43,654 41
1860 .....	37,274.44	46,593 11	42,309 70
1861 .....	80,425.94	101,357 57	38,927 06
1862 .....	15,442.33	19,651 72	39,274 84
1863 .....	19,726.55	24,895 48	12,106 32
1864 .....	39,605.39	49,506 99	11,359 10
1865 .....	89,232.67	111,589 74	10,350 72
1866 .....	82,387.59	105,511 49	15,360 33
1867 .....	258,658.57	354,315 39	14,369 97
1868 .....	464,405.23	597,272 83	18,860 23
1869 .....	1,726,794.39	2,198,661 96	32,381 11
1870 .....	445,961.61	608,009 64	24,430 86
1871 .....	221,186.36	367,512 79	20,452 58
1872 .....	255,060.46	464,188 81	39,822 10
1873 .....	202,060.73	489,497 05	41,774 12
1874 .....	266,127.55	507,153 55	46,577 22
1875 .....	358,298.73	658,266 62	51,368 96
1876 .....	306,486.57	536,280 81	51,286 27
1877 .....	401,022.17	483,932 19	48,294 92
1878 .....	277,938.62	396,819 52	47,135 05
1879 .....	141,287.91	219,436 22	48,342 14
1880 .....	111,852.88	191,239 00	51,172 16
1881 .....	143,380.20	308,689 55	52,934 94
	6,050,877.66	\$8,974,658 16	\$811,048 32

The gross receipts for the time above stated were ..... \$8,974,658 16  
The expenses thereof amounted to ..... 811,048 32

Net receipts ..... \$8,163,609 84  
Five per centum of the net proceeds amounts to ..... 408,180 49

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, }  
WASHINGTON, D. C., April 14, 1882. }

I hereby certify that I have caused the foregoing table to be examined and compared with the records of this office, and find it to be correct.

N. C. McFARLAND, Commissioner.

TABLE No. 2.

Statement of the Total Amounts of Money received by the several States of the United States from the net proceeds of the sales of the Public Lands up to June 30, 1880.

STATES.	A 1.	B 1.	A 2.	B 2.	C.	Total.
Alabama	\$17,119 35	\$2,107 71	\$5,248 74	\$649 43	\$1,004,365 57	\$1,029,490 20
Arkansas	3,134 60	385 93	1,348 19	143 44	227,359 05	232,371 21
Colorado					9,589 73	9,589 73
Connecticut	10,845 43	1,335 27				12,180 70
Delaware	2,695 30	331 84				3,027 14
Florida	1,545 96	190 33			28,975 44	30,711 73
Georgia	20,256 43	2,493 94				22,750 37
Illinois	16,654 33	2,050 46	29,635 02	2,223 29	712,744 82	763,307 92
Indiana	23,994 54	2,954 17	2,883 12	446 30	618,277 50	648,555 63
Iowa	1,508 03	185 67			626,075 16	627,768 96
Kansas					258,842 11	258,842 11
Kentucky	24,731 31	3,044 88				27,776 19
Louisiana	9,971 59	1,227 69	2,827 99	141 72	315,612 89	329,781 88
Maine	17,554 90	2,161 33				19,716 23
Maryland	15,187 54	1,869 88				17,057 42
Massachusetts	25,807 92	3,177 43				28,985 35
Michigan	7,426 03	914 28	1,141 79	247 47	471,344 55	481,074 12
Minnesota					99,409 47	99,409 47
Mississippi	10,410 19	1,281 69	2,396 26		987,832 28	1,001,920 42
Missouri	12,608 57	1,552 35	8,388 24	697 39	551,423 83	574,670 38
Nebraska					116,578 67	116,578 67
Nevada					8,319 84	8,319 84
New Hampshire	9,955 64	1,225 72				11,181 36
New Jersey	13,050 42	1,606 75				14,657 17
New York	84,974 15	10,461 89				95,436 04
North Carolina	22,917 97	2,821 63				25,739 60
Ohio	53,157 53	6,544 67	923 64	420 49	596,634 10	657,680 43
Oregon					34,911 09	34,911 09
Pennsylvania	60,313 27	7,425 68				67,738 95
Rhode Island	3,807 28	468 75				4,276 03
South Carolina	16,218 15	1,996 75				18,214 90
Tennessee	26,447 68	3,256 20				29,703 88
Vermont	10,213 61	1,257 48				11,471 09
Virginia	37,090 48	4,566 52				41,657 00
Wisconsin	1,082 45	133 27			455,253 73	456,469 45
District of Columbia	1,463 53	180 19				1,643 72

TABLE No. 3—A 1.

Statement showing the respective Shares of the several States and Territories of the United States and the District of Columbia under the Distribution Act of fourth September, 1841, of the residue of the Net Proceeds of the Public Lands sold in the half year ending thirtieth June, 1842.

STATES, TERRITORIES, AND DISTRICT OF COLUMBIA.	Free Population.	Slaves.	Federal Numbers.	Distributive Shares.
Maine	501,793	0	501,793	\$17,554 90
New Hampshire	284,573	1	284,574	9,955 64
Massachusetts	737,698	1	737,699	25,807 92
Rhode Island	108,825	5	108,828	3,807 28
Connecticut	309,698	17	310,008	10,845 43
Vermont	291,948	0	291,948	10,213 61
New York	2,428,917	4	2,428,919	84,974 15
New Jersey	372,632	674	373,036	13,050 42
Pennsylvania	1,723,969	64	1,724,007	60,313 27
Delaware	75,480	2,605	77,043	2,695 30
Maryland	380,282	89,737	434,124	15,187 54
Virginia	790,810	448,987	1,080,202	37,090 48
North Carolina	507,602	245,817	655,092	22,917 97
South Carolina	267,360	327,038	463,583	16,218 15
Georgia	410,448	280,944	579,014	20,256 43
Alabama	337,224	253,532	489,343	17,119 35
Mississippi	180,440	195,211	297,567	10,410 19
Louisiana	183,959	168,452	285,030	9,971 59
Tennessee	646,151	183,059	755,986	26,447 68
Kentucky	597,570	182,258	706,925	24,731 31
Ohio	1,519,464	3	1,519,466	53,157 53
Indiana	685,863	3	685,865	23,994 54
Illinois	475,852	331	476,051	16,654 33
Missouri	325,462	58,240	360,406	12,608 57
Arkansas	77,639	19,935	89,600	3,134 60
Michigan	212,267	0	212,267	7,426 03
Wisconsin	30,934	11	30,941	1,082 45
Iowa	43,096	16	43,106	1,508 03
Florida	28,760	25,717	44,190	1,545 96
District of Columbia	39,018	4,694	41,834	1,463 53
Totals	14,576,034	2,487,356	16,068,447	\$562,144 18

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, }  
WASHINGTON, D. C., April 14, 1882. }

I hereby certify that I have caused the foregoing table to be examined and compared with the records of this office, and find it to be correct.

N. C. McFARLAND, Commissioner.

TABLE No. 4—B 1.

Statement showing the respective Shares of the several States and Territories of the United States and the District of Columbia under the Distribution Act of fourth September, 1841, of the residue of the net proceeds of the Public Lands sold from the first day of July to the twenty-ninth of August, 1842, inclusive.

STATES, TERRITORIES, AND DISTRICT OF COLUMBIA.	Free Population.	Slaves.	Federal Numbers.	Distributive Shares.
Maine .....	501,793	-----	501,793	\$2,161 33
New Hampshire .....	284,573	1	284,574	1,225 72
Massachusetts .....	737,698	1	737,699	3,177 43
Rhode Island .....	108,825	5	108,828	468 75
Connecticut .....	309,998	17	310,008	1,335 27
Vermont .....	291,948	-----	291,948	1,257 48
New York .....	2,428,917	4	2,428,919	10,461 89
New Jersey .....	372,632	674	373,036	1,606 75
Pennsylvania .....	1,723,969	64	1,724,007	7,425 68
Delaware .....	75,480	2,605	77,043	331 84
Maryland .....	380,282	89,737	434,124	1,869 88
Virginia .....	790,810	448,987	1,060,202	4,566 52
North Carolina .....	507,602	245,817	655,092	2,821 63
South Carolina .....	267,360	327,038	463,583	1,996 75
Georgia .....	410,448	280,944	579,014	2,493 94
Alabama .....	337,224	253,532	489,343	2,107 71
Mississippi .....	180,440	195,211	297,567	1,281 69
Louisiana .....	183,959	168,452	285,030	1,227 69
Tennessee .....	646,151	180,059	755,986	3,256 20
Kentucky .....	597,570	182,258	706,925	3,044 88
Ohio .....	1,519,464	3	1,519,466	6,544 67
Indiana .....	685,863	3	685,865	2,954 17
Illinois .....	475,852	331	476,051	2,050 46
Missouri .....	325,462	58,240	360,406	1,552 35
Arkansas .....	77,639	19,935	89,600	385 93
Michigan .....	212,267	-----	212,267	914 28
Wisconsin .....	30,934	11	30,941	133 27
Iowa .....	43,096	16	43,106	185 67
Florida .....	28,760	25,717	44,190	190 33
District of Columbia .....	39,018	4,694	41,834	180 19
Totals .....	14,576,034	2,487,356	16,068,447	\$69,210 35

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, }  
WASHINGTON, D. C., April 14, 1882. }

I hereby certify that I have caused the foregoing table to be examined and compared with the records of this office, and find it to be correct.

N. C. McFARLAND, Commissioner.

TABLE No. 5—A 2.

Statement of the Additional Allowance to the States of Ohio, Indiana, Illinois, Missouri, Arkansas, Louisiana, Mississippi, Alabama, and Michigan, of ten per cent of the net proceeds of the Public Lands sold in the half year ending thirtieth June, 1842, under the Distribution Act of fourth September, 1841, according to the mode prescribed by the First Comptroller of the Treasury:

STATES AND TERRITORIES.	Gross proceeds of Lands sold in States and Territories.	Proportion of Expenses to be deducted.	Net proceeds of Sales after deducting proportion of Expenses from gross proceeds.	Additional allowance of ten per cent to each of the new States on net proceeds of Sales therein.
Ohio .....	\$12,534 27	\$3,297 88	\$9,236 39	\$923 64
Indiana .....	39,125 53	10,294 29	28,831 24	2,883 12
Illinois .....	402,163 06	105,812 86	296,350 20	29,635 02
Missouri .....	113,832 94	29,950 51	83,882 43	8,388 24
Arkansas .....	18,295 69	4,813 78	13,481 91	1,348 19
Louisiana .....	38,377 32	10,097 43	28,279 89	2,827 99
Mississippi .....	32,518 52	8,555 92	23,962 60	2,396 26
Alabama .....	71,228 19	18,740 80	52,487 39	5,248 74
Michigan .....	15,494 68	4,076 79	11,417 89	1,141 79
Wisconsin .....	743,570 20	195,640 26	547,929 94	-----
Iowa .....	93,646 50	24,639 27	69,207 23	-----
Totals .....	\$837,216 70	\$220,279 53	\$616,937 17	\$54,792 99

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, }  
WASHINGTON, D. C., April 14, 1882. }

I hereby certify that I have caused the foregoing table to be examined and compared with the records of this office, and find it to be correct.

N. C. McFARLAND, Commissioner.

TABLE No. 6—B 2.

Statement of the Additional Allowance to the States of Ohio, Indiana, Illinois, Missouri, Arkansas, Louisiana, Mississippi, Alabama, and Michigan, of the ten per cent of the net proceeds of the Public Lands sold therein respectively, from the first day of July to the twenty-ninth of August, 1842, inclusive, under the Distribution Act of fourth September, 1841, according to the mode prescribed by the First Comptroller of the Treasury.

STATES AND TERRITORIES.	Gross proceeds of Sales in the States and Territories, deducting proportion of \$5 43 excess of repay in Miss.	Proportion of Expenses deducted from gross proceeds.	Net proceeds of Sales after deducting from the gross proceeds the proportion of Expenses as stated.	Additional allowance to the above mentioned States of ten per cent of net proceeds of Lands sold therein.
Ohio .....	\$7,286 63	\$3,081 76	\$4,204 87	\$420 49
Indiana .....	7,733 95	3,270 95	4,463 00	446 30
Illinois .....	38,527 51	16,294 59	22,232 92	2,223 29
Missouri .....	12,085 07	5,111 19	6,973 88	697 39
Arkansas .....	2,485 73	1,051 30	1,434 43	143 44
Louisiana .....	2,455 96	1,038 71	1,417 25	141 72
Alabama .....	11,253 99	4,759 69	6,494 30	649 43
Michigan .....	4,288 38	1,813 70	2,474 68	247 47
Totals .....	\$86,117 22	\$36,421 89	\$49,695 33	\$4,969 53

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, }  
WASHINGTON, D. C., April 14, 1882. }

I hereby certify that I have caused the foregoing table to be examined and compared with the records of this office, and find it to be correct.

N. C. McFARLAND, Commissioner.

TABLE No. 7—C.

Statement of the Amounts which have accrued to the following named States up to the thirtieth June, 1880, on account of the two, three, and five per cent upon the net proceeds of the Sales of the Public Lands within their respective limits.

STATES.	Two Per Cent.	Three Per Cent.	Five Per Cent.	Aggregate.
Alabama.....	\$401,782 23	\$602,583 34		\$1,004,365 57
Arkansas.....			\$227,359 05	227,359 05
Colorado.....			9,589 73	9,589 73
Florida.....			28,975 44	28,975 44
Iowa.....			626,075 16	626,075 16
Illinois.....		712,744 82		712,744 82
Indiana.....		618,277 50		618,277 50
Kansas.....			258,842 11	258,842 11
Louisiana.....			315,612 89	315,612 89
Mississippi.....	395,142 08	592,690 20		987,832 28
Missouri.....	15,587 78	535,836 05		551,423 83
Michigan.....			471,344 55	471,344 55
Minnesota.....			99,409 47	99,409 47
Nevada.....			8,319 84	8,319 84
Nebraska.....			116,578 67	116,578 67
Oregon.....			34,911 09	34,911 09
Ohio.....		596,634 10		596,634 10
Wisconsin.....			455,253 73	455,253 73
Totals.....	\$812,512 09	\$3,658,766 01	\$2,652,271 73	\$7,123,549 83

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, }  
WASHINGTON, D. C., April 14, 1882. }

I hereby certify that I have caused the foregoing table to be examined and compared with the records of this office, and find it to be correct.

N. C. McFARLAND, Commissioner.

TABLE No. 8.

Acts of Congress granting to the several States of the United States certain per centum upon the net proceeds of the Sales of the Public Lands.

STATES.	Date Granting.	United States Statutes.	
		Volume.	Page.
Alabama.....	2 per cent, September 4, 1841.....	5	457
Alabama.....	3 per cent, March 2, 1819.....	3	489
Alabama.....	3 per cent, May 3, 1822.....	3	674
Alabama.....	3 per cent, July 4, 1836.....	5	116
Alabama.....	5 per cent, March 2, 1855.....	10	630
Alabama.....	10 per cent, September 4, 1841.....	5	453
Arkansas.....	5 per cent, June 23, 1836.....	5	58
Arkansas.....	10 per cent, September 4, 1841.....	5	453
Colorado.....	5 per cent, March 3, 1875.....	18	476
Florida.....	5 per cent, March 3, 1845.....	5	742
Florida.....	5 per cent, March 3, 1845.....	5	788
Iowa.....	5 per cent, March 3, 1845.....	5	742
Iowa.....	5 per cent, March 3, 1845.....	5	789
Iowa.....	5 per cent, December 28, 1846.....	9	117
Iowa.....	5 per cent, March 2, 1849.....	9	349
Illinois.....	5 per cent, April 18, 1818.....	3	430
Illinois.....	10 per cent, September 4, 1841.....	5	453
Indiana.....	3 per cent, April 11, 1818.....	3	424
Indiana.....	5 per cent, April 19, 1816.....	3	290
Indiana.....	10 per cent, September 4, 1841.....	5	453
Kansas.....	5 per cent, May 4, 1858.....	11	270
Louisiana.....	5 per cent, February 20, 1811.....	2	643
Louisiana.....	10 per cent, September 4, 1841.....	5	453
Missouri.....	2 per cent, February 28, 1859.....	11	388
Missouri.....	3 per cent, May 3, 1822.....	3	674
Missouri.....	5 per cent, March 6, 1820.....	3	547
Missouri.....	10 per cent, September 4, 1841.....	5	453
Mississippi.....	2 per cent, September 4, 1841.....	5	457
Mississippi.....	3 per cent, March 1, 1817.....	3	348
Mississippi.....	3 per cent, May 3, 1822.....	3	674
Mississippi.....	5 per cent, July 4, 1836.....	5	116
Mississippi.....	5 per cent, March 3, 1857.....	11	200
Mississippi.....	10 per cent, September 4, 1841.....	5	453
Michigan.....	5 per cent, June 23, 1836.....	5	60
Michigan.....	10 per cent, September 4, 1841.....	5	453
Minnesota.....	5 per cent, February 26, 1857.....	11	167
Minnesota.....	5 per cent, May 11, 1858.....	11	285
Nebraska.....	5 per cent, April 19, 1864.....	13	49
Nevada.....	5 per cent, March 16, 1864.....	13	32
Ohio.....	3 per cent, March 3, 1803.....	2	226
Ohio.....	5 per cent, April 30, 1802.....	2	175
Ohio.....	10 per cent, September 4, 1841.....	5	453
Oregon.....	5 per cent, February 14, 1859.....	11	384
Wisconsin.....	5 per cent, August 6, 1846.....	9	58
Wisconsin.....	5 per cent, May 29, 1848.....	9	233
New Hampshire.....	10 per cent, September 4, 1841.....	5	453
Massachusetts.....	10 per cent, September 4, 1841.....	5	453
Rhode Island.....	10 per cent, September 4, 1841.....	5	453
Connecticut.....	10 per cent, September 4, 1841.....	5	453
New York.....	10 per cent, September 4, 1841.....	5	453
New Jersey.....	10 per cent, September 4, 1841.....	5	453
Pennsylvania.....	10 per cent, September 4, 1841.....	5	453
Delaware.....	10 per cent, September 4, 1841.....	5	453
Maryland.....	10 per cent, September 4, 1841.....	5	453
Virginia.....	10 per cent, September 4, 1841.....	5	453
North Carolina.....	10 per cent, September 4, 1841.....	5	453
South Carolina.....	10 per cent, September 4, 1841.....	5	453
Georgia.....	10 per cent, September 4, 1841.....	5	453
Kentucky.....	10 per cent, September 4, 1841.....	5	453
Vermont.....	10 per cent, September 4, 1841.....	5	453
Tennessee.....	10 per cent, September 4, 1841.....	5	453
Maine.....	10 per cent, September 4, 1841.....	5	453
District of Columbia.....	10 per cent, September 4, 1841.....	5	453

**EXHIBIT No. 11.**

House of Representatives, Forty-fifth Congress, second session. Report No. 707.

**LANDS LOCATED ON MILITARY WARRANTS IN CERTAIN STATES.**

April 30, 1878. Recommended to the Committee on the Public Lands and ordered to be printed.

Mr. SAPP, from the Committee on the Public Lands, submitted the following

**REPORT.**

[To accompany bill H. R. 4239.]

The Committee on the Public Lands, to whom was referred the bill H. R. No. 4239, having had the same under consideration, do make the following report thereon:

The bill provides for the payment by the General Government to the States of Ohio, Indiana, Illinois, Missouri, Michigan, Wisconsin, Minnesota, Iowa, Nebraska, Kansas, Arkansas, Louisiana, Alabama, Mississippi, Florida, Oregon, Nevada, and Colorado, five per centum on the military locations of lands therein, estimating the same at \$1 25 per acre. Heretofore, the five per centum upon this class of lands has been withheld as not falling within the purview and intent of the stipulations contained in the several Acts admitting these States into the Union, to the effect that the General Government would pay the percentage in question on the proceeds of the sales of the public lands for and on account of certain designated conditions therein specified, which were to be binding upon and observed by the States as members of the Union. The nature of these considerations may be stated, summarily, to be a concession not to tax the public lands; not to tax private lands for the space of five years after date of entry in some seven of these States; in others not to tax lands granted for military services in the War of 1812 for three years from date of patent; not to interfere with the primary disposal of the soil, nor to tax the non-resident proprietor more than the resident, etc.

This compact, made at the time these States were admitted into the Union, has been observed and kept on their part in good faith, and they claim the observance of like good faith on the part of the General Government in fulfilling its part of the contract, namely, the payment of the five per cent, being the stipulated consideration that induced the States to enter into and perform their part of the contract. That the Government has done so on all sales of public lands for cash is not disputed. But the non-payment of the five per cent on all lands upon which military land warrants have been located is not denied, and it is claimed that the Government is under no obligations to pay the same, it being insisted upon that the lands so taken up do not fall within the compact, while the States interested maintain that the Government is obliged to pay this five per cent on all lands on which these military warrants have been located, and the bill under consideration is for the purpose of requiring such payment to be made. It has been contended that the five per cent to be paid to these States has reference to cash sales of the public lands, and none other. The States interested maintain that this is not a sound interpretation of the obligations assumed by the Government, and some of the reasons for this claim will be stated.

The several grants of land for military services rendered in the three great wars of this country, namely, the Revolutionary War, the War of 1812, and the Mexican War, were not bounties merely; they were not mere gratuities given by the Government out of a spirit of generosity to the soldiers who served in these wars; they were not granted or received in this spirit, but were by the very terms of most of the Acts authorizing the same, given in part payment for military services. They entered into and formed a part of the contract of enlistment. The object of these grants was to facilitate and encourage enlistments. In order to fill up the rank and file of the army rapidly, Congress offered in advance, besides specified monthly wages in money, an additional inducement or consideration in lands—not for past services, but for services thereafter to be rendered. The land warrant to be received was as much a part of the stipulated compensation provided for by the law under which the enlistment was made, and entered into the contract just as fully between the soldier and the Government, as his monthly pay did. If these grants had all been made after the rendition of the military services, it might be otherwise; but they were not. They were offered as a part of the compensation that would be paid for such services. Whatever differences of opinion exists as to whether these grants were sales or not, may to a great extent be attributed to a misunderstanding of the term "bounty" as applied to this kind of reward for military services. It is not used in its popular sense as importing a gratuity, but in the technical sense of a gross sum or quantity, given in addition to the monthly stipend, but given like the latter in consideration of and as payment for services to be rendered. Thus in the late war, in order to stimulate enlistments, a pecuniary "bounty"—that is, a gross sum in addition to the monthly wages—was offered by the Government to all who would enlist in the military service; and in numerous instances further bounties of the same kind were offered and paid by counties and cities in order to induce enlistments to fill up their respective quotas of men. Such offers, when accepted and acted upon, so completely constituted contracts with the parties enlisting under them, that in repeated instances fulfillment thereof has been enforced by the Courts. These pecuniary "bounties," by which enlistments were so largely procured during the late rebellion, occupy precisely the same attitude as respects the question now under consideration, as the so called bounty land warrants do. Both really were simply extra allowances offered for the same purpose, and when accepted and enlistments made thereunder, they became *ipso facto* contracts which any Court would recognize and enforce. In this way the public lands were made available as a resource for defraying the national burdens just as effectually as if they had been converted into money, and the money used in paying the enlisted men. It was an exchange of one valuable thing for another, which in law makes it a case of sale, to constitute which it is enough that the title to property is parted with for a valuable consideration. It is not necessary that there be a moneyed consideration in order to constitute a sale. Any other valuable consideration will be as effectual in supporting a contract and in making a sale, which will pass the title, whether it be merchandise, other property, or services. Suppose one man employs another to work for a given period of time, under an agreement to pay him monthly wages at a given price per month and forty acres of land, to be conveyed when the period of service expires, it must be conceded that when the services are rendered the party would be as much entitled to the land as he would be to the stipulated sum per month, and this would as clearly be a sale of the land as if the consideration therefor had been money. The principle involved in the case supposed

is precisely the same as in the one under consideration. And if it is a sale in the one case, it is difficult to see why it would not be in the other. But let us examine this character or mode of disposing of lands by the United States, as constituting a "sale" when it is viewed as a transaction between the Government and the party locating the warrant. Instead of patenting specific land to the soldier entitled thereto, in virtue of his military services, the Government issued to him its written obligation, payable in the agreed quantity of land, to be selected by him from the whole body of lands open for sale and entry throughout the country. These obligations or "warrants" were made assignable by law, and subject to sale and transfer in the market, from hand to hand, by mere delivery. In this way they became practically a species of Government scrip or currency, and persons desirous of becoming land proprietors could and did go into the market and purchase the same, and with them buy the land they wanted; and in this way large quantities of the public lands were disposed of wherever the same were subject to sale and entry at the different Land Offices. Now, it is claimed to be against reason and common usage to say that these lands are not sold because the Government receives in payment for them, instead of cash, its own obligations, payable in land. Can it be considered less a case of sale that the purchaser, instead of paying for his lands in greenbacks, does so with the Government's own paper obligations?

The chief difference in the two descriptions of paper is, that the first is available for purchasing all commodities, indiscriminately, while the latter is limited to purchase of land only. Suppose the United States had issued pecuniary obligations, *i. e.*, bonds payable to bearer at a future day, or payable like greenbacks, whenever the Government should find itself able, but with the proviso that they should be receivable at par in payment for public lands, how would the case of lands paid for with such bonds differ from the present case? The bonds might have been issued like land warrants, for military services, or for any other consideration, or for no consideration. They might have been regarded by Congress strictly as a gratuity to parties thought to have, for any reason, deserved well of their country. The motive or consideration that induced or authorized the issuing of the same would not affect the question whether lands entered and paid for with such bonds ought to be considered as sold or not. In both cases the Government would have received in such disposition of its lands its own valid outstanding obligations, for the fulfillment of which its faith was pledged, and the surrender of which by the holder would constitute an ample consideration, both legal and equitable, for the conveyance. These considerations apply, to the fullest extent, to the case of entries of land by means of land warrants. For it is immaterial to the character of this transaction for what consideration such obligation was issued. Its legal capability of assignment has practically imparted to the land warrant a negotiable quality. It has become part of the general mass of securities passing from hand to hand in the market. The purchaser buys it relying on the faith of the United States for the fulfillment of the agreement embodied in it, and without inquiry as to the consideration in which it originated. In this connection it is proper to state that Congress has treated these warrants, for military services, as money, both by receiving them in payment for large tracts of land or by authorizing their conversion into scrip, and then receiving this scrip in payment for any public land, wherever situate. This scrip so issued in lieu of land warrants, or in redemption of the same, has always been treated as money by the Government. It has always been received in payment for land just the same as money; and when lands have been taken up by this scrip, representing the land

warrants, the Government has paid the five per cent to the States where it was situate, while the per cent has been withheld where the land has been taken up by the warrants themselves. We think no good reason can be assigned for this distinction. The land absorbed by either class of paper is precisely the same in effect, so far as the Government is concerned, and both alike discharge its obligations, and for that very reason the land so absorbed by both classes of paper should be treated as having been sold.

Again, on March 2, 1855, Congress passed an Act entitled "An Act to settle certain accounts between the United States and the State of Alabama." This Act provides:

That the Commissioner of the General Land Office be and he is hereby required to state an account between the United States and the State of Alabama, for the purpose of ascertaining what sum or sums of money are due to said State, heretofore unsettled under the Act of March 2, 1819, for the admission of Alabama into the Union, and that he be required to include in said account the several reservations under the various treaties with the Chickasaw, Choctaw, and Creek Indians within the limits of Alabama, and allow and pay to said State five per cent thereon, as in case of other sales.

Subsequently to this Congress passed an Act entitled "An Act to settle certain accounts between the United States and the State of Mississippi and other States," which was approved March 3, 1857, and is as follows:

*Be it enacted by the Senate and House of Representatives of the United States in Congress assembled,* That the Commissioner of the General Land Office be and he is hereby required to state an account between the United States and the State of Mississippi, for the purpose of ascertaining what sum or sums of money are due to said State, heretofore unsettled, on account of the public lands in said State, and upon the same principles and allowance as prescribed in the "Act to settle certain accounts between the United States and the State of Alabama," approved the second of March, 1855; and that he be required to include in said account the several reservations under the various treaties with the Chickasaw and Choctaw Indians within the limits of Mississippi, and allow and pay to the said State five per centum thereon, as in case of other sales, estimating the lands at the value of \$1 25 per acre.

SEC. 2. *And be it further enacted,* That the said Commissioners shall also state an account between the United States and each of the other States upon the same principles; and shall allow and pay to each State such amount as shall thus be found due, estimating all lands and permanent reservations at \$1 25 per acre.

The settlements authorized and required by these Acts between the Government and the States of Alabama and Mississippi, and the payment of the five per cent for these reservations, estimating the land at \$1 25 per acre, are a clear recognition of the principle contended for by the States named in the bill under consideration. The fee to the land in these reservations was granted to the Indians, either out of good will and to encourage friendly relations or in part consideration of their possessory right to large tracts of this country, surrendered to the Government. It was no cash sale of the lands to the Indians. So the military land warrants were granted to the soldiers, either as a grateful acknowledgment of their services or in part payment of the same; and whether one or the other, the two cases are the same in principle, and the five per cent should be paid in both cases or should not be paid in either. But we wish to call especial attention to the provisions of the Act with reference to Mississippi, as we think all ambiguity in respect to the question under consideration, if there be any, is removed by the language there used; for if Congress meant anything, it would seem the Commissioner, by that Act, is required to do three things: First—He is to state an account between the United States and Mississippi and the other States, for the purpose of ascertaining what sum or sums of money are due to these States, heretofore unsettled, on account of public lands in said States. Second—He is to include two things in said account, which are, all lands and permanent reservations, estimating the same at



\$1 25 per acre; and, third—he is to pay five per cent thereon as in cases of other sales. If Congress did not intend to include all lands upon which military land warrants had been located as well as permanent reservation, we are unable to see what was intended by the language employed in this Act. We think it must be admitted that this account was to include all public lands on which the five per cent was still unsettled, as well as reservations. And by the express terms of the Act, this necessarily includes the military locations, as these were a part of the public lands on which the five per cent had not been paid. If these lands were not intended to be included, what lands does the Act refer to? It cannot be the lands sold for cash, for there was no dispute about them. The Government had faithfully complied with its obligations to the States as it respects these cash sales, and had paid the five per cent on all the lands so sold. Neither can it refer to the reservations, for they were fully provided for by the first section of the Act by name, and are to be paid for upon the same principles and allowance as those recognized and provided for in the case of the State of Alabama. And in addition to these reservations, the Government is to pay on account of all public lands in said State of Mississippi upon the same principles and allowance. So that both lands and reservations are clearly provided for in this first section, while the second section provides that the United States shall state an account with the other States upon the same principles, and shall allow and pay to them such amount as shall be found due on account of all lands and reservations, estimating the same at \$1 25 per acre. So that other lands than those sold for cash and reservations must be referred to by this Act in order to give its provisions force and effect. Indeed, we think that a proper construction of the scope and meaning of this Act of Congress would include all lands in these States disposed of by the Government for any purpose other than to the State itself, or by the consent of the State. That it is broad enough to, and does, include the lands in question, we think is beyond controversy. And to avoid all question hereafter, as to its including all lands disposed of by the General Government, and confining it to cash sales, and lands located for military warrants, your committee recommend that the bill be amended to that effect, and that the several States named be required, through their Legislatures, to relinquish all claims to the five per cent, excepting cash sales and those on which land warrants have been and shall be located. It is further insisted by these States that if the General Government is not obligated to pay the five per cent on the lands in dispute by the terms of the contract with these States fairly construed, it would be within the power of the Government to convey all the public lands, in any State, for military services, and in that way defeat any benefit they were to derive under the contract. It is claimed by these States, that as they were to have five per cent of the proceeds of the sales of public lands, they were to be disposed of only in such manner as would enable them to get this sum therefrom, and that any other disposition of these lands defeats the consideration that induced them to enter into the stipulations provided for on their part. We think there are strong reasons for this position, and that the Government in all justice cannot dispose of the public lands in these States for military services, and then refuse to pay to them the per cent provided for by the compact. Suppose that A agrees with B that he will pay him a commission of five per cent for selling a section of land at a given price, and after making this agreement he directs B to take a given quantity of merchandise for the same, which B does, can there be any doubt that B is entitled to the commission agreed upon for making the sale because the mode of paying for the same is changed by A from cash to

merchandise? And, if not, is not the Government as much bound under its contract with these States to pay the five per cent agreed upon, where the land is given for and in consideration of military services, as it would be if the sale had been for cash? In other words, the contract presupposes that all the public lands will be so sold and disposed of that the States will realize the per cent agreed upon; and that no disposition of them, to be made in such manner as to defeat the same was contemplated at the time, and that such is the implication arising from the contract itself. Such was clearly the view taken by Congress of this question in the Acts of March 2, 1855, and March 3, 1857. Hence, the language used, "*all lands and permanent reservations*," and, as if not to be misunderstood, the same are "*to be valued at \$1 25 per acre*." Not five per cent of the proceeds from the cash sales, but five per cent on all lands *disposed of in any other way*, estimating the same at \$1 25 per acre. Any other view would defeat this legislation, both in letter and in spirit, and would do violence to every rule of construction known to the law. It could not have been within the contemplation of the parties that Congress might defeat the payment of the five per cent by some other disposition of the public lands than a sale of the same for cash, for if it had been, this privilege would have been reserved, and it is clearly evident no right whatever was reserved to make any disposition of the same that would relinquish the payment of this five per cent. Such being the contract, what is the duty of Congress in respect to this claim made by these States? On this subject Chancellor Kent says:

That a law embodying a contract duly passed and promulgated, thenceforward becomes the law of the land, and that is as binding upon Congress as upon the people, or any other branch of the government, or as any other contract would be binding upon the government executed under the authority of law.

The obligations imposed upon these States were onerous. The loss of revenue in not being allowed to exercise the power of taxation, alone would far exceed in value the amount that will be gained by them if the five per cent is paid on all public lands including cash sales and those exchanged for military services. After careful consideration and much deliberation, your committee have reached the following conclusions:

*First*—That the several enabling Acts admitting the new States into the Union, as it respects the payment of five per centum on the sales of the public lands, do embody the elements of a legal and binding contract between said States and the National Government, which both parties are entitled to have carried into effect in the same manner and on the same principles as contracts are between individuals.

*Second*—That the agreement to pay the five per centum has a sufficient consideration in the concessions made by these States in the acts of admission into the Union, in the surrender of revenue and otherwise, and that it was not within the contemplation of the parties that Congress might defeat the right of the States to the five per cent on sales by adopting a policy of disposing of the public lands in some other form than for money, and as a matter of fact the Government did not reserve the right to give away the public lands for objects and uses outside of the States, or to withhold the payment of the five per cent on lands granted for military purposes; and third, that the several grants of lands for military services rendered in the three great wars of this country, namely, the Revolutionary war, the war of 1812, and the Mexican war, were sales in the sense of the law and the meaning of the compact between those States and the National Government.

Your committee would, therefore, recommend that the bill under consideration be amended by providing, first, that no certificates provided for

by the bill shall be issued to any State until said State, by its Legislature, shall relinquish or release all further claims against the United States for five per centum of the net proceeds of the sales of public lands other than cash sales and locations by military land warrants; and second, that whatever amount may be found due the State of Alabama, under the provisions of this Act, shall, when paid to said State, be held in trust for the use and benefit of the University of said State, and may be disposed of by the Legislature thereof in such manner as may be deemed for the best interests of said University; and that after it has been so amended it pass. It may be proper to add that the mode of adjustment and settlement provided for by the bill does not make it burdensome, but easy to the Government, as no money is required to be paid out of the Treasury for that purpose. The bill provides that the Secretary of the Treasury shall be authorized to issue and deliver to the Governors of the States named, or their agents, United States certificates of indebtedness of the denominations of \$100, \$500, and \$1,000 each, as the Secretary may direct, each of which is to run twenty years from its date, to draw interest, payable semi-annually, at the rate of three and sixty-five hundredths per centum per annum.

It is believed that a sum far in excess of what will be necessary to meet the payment of these certificates will be realized by the time they mature from the sales of the public land belonging to the Government yet remaining undisposed of. Your committee feel the more strongly inclined to recommend the passage of this bill, from the fact that in nearly all the States the revenue arising from this source has been set apart for educational purposes, in which the nation and the States are alike interested.

### EXHIBIT No. 11½.

Forty-seventh Congress, first session. S. 67.

In the Senate of the United States, December 5, 1881.

Mr. Voorhies asked and, by unanimous consent, obtained leave to bring in the following bill, which was read twice and referred to the Committee on Public Lands:

#### A BILL

*To authorize the Secretary of the Interior to ascertain and certify the amount of land located with military warrants in the States described therein, and for other purposes.*

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be and he is hereby directed to ascertain the amount of public lands entered by the location of military scrip and land warrants in the States of Ohio, Indiana, Illinois, Missouri, Michigan, Wisconsin, Minnesota, Iowa, Nebraska, Kansas, Arkansas, Louisiana, Alabama, Mississippi, Florida, Oregon, Nevada, and Colorado (including Virginia military and United States military land warrants located in the State of Ohio after her admission into the Union), whose enabling Acts of admission into the Union contain a stipulation for the payment of five per centum on the sales of public lands therein; and, after making such investigation, it shall be the duty of the Secretary of the Interior to certify the amount so found to the Secretary of the Treasury; and it shall be the duty of the Secretary of the*

Treasury, out of any money in the Treasury not otherwise appropriated, to pay to such States five per centum on the amount of lands located by military scrip and land warrants, estimating said lands at the rate of one dollar and twenty-five cents per acre; *provided*, that the Secretary of the Interior shall exclude from his estimate and certificate all lands so entered upon which the said five per centum has been paid.

SEC. 2. That the Secretary of the Treasury be and he is hereby authorized and directed to pay the amounts allowed as herein provided by issuing and delivering to the Governors of the States named, or their duly authorized agents, United States certificates of indebtedness, said certificates to be of the denomination of one hundred, five hundred, and one thousand dollars each, as the Secretary may direct, to be made and issued by the Secretary in such form, and signed, and attested, and registered, as he shall direct, each certificate to run twenty years from its date, to draw interest, payable semi-annually, at the rate of three and sixty-five hundredths per centum per annum, and be payable, both principal and interest, when due, out of any money in the Treasury not otherwise appropriated, on the presentation of the same; *provided*, that the Secretary of the Treasury may, at his option, pay the said amounts allowed, or any part thereof, out of any money in the Treasury not otherwise appropriated; and whatever may be necessary to carry out the purposes and provisions of this Act is hereby appropriated out of any money in the Treasury of the United States not otherwise appropriated; *provided further*, that the receipt of the certificates of indebtedness, or money, provided for in this Act, by the Governor of any one of the States named, or his duly authorized agent, shall operate on the part of such State so receiving the same as an estoppel of any and all claims which such State may have against the United States for five per centum on account of any lands which have been, or may hereafter be, granted to such State, corporation, person, or persons, for the purposes of internal improvements, or to aid in the construction of railroads or canals, or for any other purpose whatsoever, or on account of any lands which have been, or may hereafter be, entered under the homestead laws of the United States.

### EXHIBIT No. 12.

Forty-seventh Congress, first session. S. 67.

In the Senate of the United States, May 17, 1882.

Ordered to lie on the table and be printed.

#### AMENDMENTS

*Intended to be proposed by Mr. Farley to the bill (S. 67) to authorize the Secretary of the Interior to ascertain and certify the amount of land located with military warrants in the States described therein, and for other purposes, viz :*

In Section 1, line 16, after the word "Treasury," insert the following: "And the Secretary of the Interior shall also ascertain and certify to the Secretary of the Treasury the amount of sales of public lands made in the State of California since the admission of said State into the Union, including the amount of such lands entered or located in said State with military scrip or land warrants."

In same section, line 21, after the word "acres," insert the following:

"And to pay to the said State of California five per centum of the proceeds of such public lands, estimating the lands entered or located with military scrip or land warrants at one dollar and twenty-five cents per acre; and money received by said State under the provisions of this Act shall be held by the said State of California as a school fund, the interest upon which shall be used in aid of the support of the common schools of said State."

Forty-seventh Congress, first session. S. 67. May 19, 1882.

*To authorize the Secretary of the Interior to ascertain and certify the amount of land located with military warrants in the States described therein, and for other purposes.*

On passage, Yeas, twenty-two; Nays, seventeen.

YEAS—Allison, Cameron (Pa.), Cameron (Wis.), Chilcott, Cockrell, Conger, Davis (Ill.), Farley, Ferry, Grover, Hale, Hill (Col.), Ingalls, Jones (Nev.), McDill, Miller (Cal.), Pugh, Sawyer, Vest, Voorhees, Walker, Windom.

NAYS—Anthony, Blair, Brown, Call, Camden, Coke, Davis (W. Va.), Dawes, Gorman, Harris, Hawley, Hoar, Jackson, Maxey, Miller (N. Y.), Morgan, Saulsbury.

### EXHIBIT No. 13.

Page 461, Laws of Iowa, 1857. Number 16.

#### A JOINT RESOLUTION AND MEMORIAL IN RELATION TO THE FIVE PER CENT FUNDS.

*Be it resolved by the General Assembly of the State of Iowa, That in the opinion of this General Assembly the State of Iowa is entitled under and by virtue of the proposition made thereto by the Congress of the United States, by an Act supplemental to the Act for the admission of the States of Iowa and Florida into the Union, approved March 3, 1845, and an Act of the General Assembly of the State entitled an Act and Ordinance accepting the proposition made by Congress on the admission of Iowa into the Union as a State, approved January 15, 1849, to five per centum on the Government price of all land sold in this State by the United States for military land warrants since January 15, 1849.*

*Resolved, That the Governor of this State be authorized and requested to take such steps as he may deem best to procure from the United States the moneys as claimed to be due this State by the foregoing resolution, approved January 23, 1857.*

STATE OF IOWA, EXECUTIVE DEPARTMENT, }  
DES MOINES, February 21, 1873. }

The resolution of the General Assembly of this State, passed February 19, 1873, a copy of which is hereto annexed, is made, as the former resolution, a part of this contract; except so far as Indian reservations are concerned, on which the said Lowe is to have twenty-five per cent on the amount which may be collected.

C. C. CARPENTER,  
Governor of Iowa.  
R. P. LOWE.

STATE OF IOWA, SS.

The following contract is hereby modified so as to authorize Edson A. Lowe to assist the said Ralph P. Lowe, his father, as agent thereunder, and in case of the latter's death or inability to act, he, the said Edson A. Lowe, shall become such agent in the room of his said father, and be entitled to receive the same benefit and pay under said contract, if successful, that the said Ralph P. Lowe would have been entitled to.

JNO. H. GEAR, Governor of Iowa.

DES MOINES, IOWA, October 8, 1881.

#### JOINT RESOLUTION IN RELATION TO STATE AGENT, HIS DUTIES, ETC.

*Be it resolved by the General Assembly of the State of Iowa, That the Joint Resolution, relative to the appointment of an agent to collect from the United States certain moneys due to the State of Iowa, approved February 21, 1872, and the action of the Governor thereunder in appointing Ralph P. Lowe State Agent, be so amended as to embrace the claims of the State of Iowa, on account of other lands in this State disposed of by the United States, under all other warrants issued for military purposes, and for Indian reservations.*

Approved February 20, 1873.

I, Josiah T. Young, Secretary of State of the State of Iowa, hereby certify that the foregoing is a true and correct copy of a Joint Resolution, passed at the adjourned session of the Fourteenth General Assembly, as the same appears in the original enrolled resolution, now on file in this office, and approved February 20, 1873.

In testimony whereof, I have hereunto set my hand, and caused the great seal of the State to be affixed.

Done at Des Moines, this twentieth day of February, A. D. 1873.

[The Great Seal of the State of Iowa.]

JOSIAH T. YOUNG,  
Secretary of State.

#### JOINT RESOLUTION.

Joint Resolution relative to the appointment of an agent for the collection of amount due from the United States to the State of Iowa, on account of lands conveyed to non-commissioned officers, musicians, and privates, in the late Mexican war.

*Be it resolved by the General Assembly of the State of Iowa, That the Governor be and is hereby authorized and empowered to appoint an agent in behalf of this State to prosecute to final decision before Congress, or in the Courts, the claim of this State for the five per cent due to the same from the United States upon the lands in this State, disposed of under military warrants issued to non-commissioned officers, musicians, and privates, in the late Mexican war, and that such agent shall be well informed in the law, and shall be allowed such compensation as shall be agreed upon between the Governor and himself, and to be paid only after the recovery of the claim in whole or in part, and not to be paid out of any other fund; and provided that the State shall not be otherwise liable for any expenses whatever attending the prosecution of such claim.*

Approved February 21, 1872.

I, Ed. Wright, Secretary of State of the State of Iowa, hereby certify that the above and foregoing is a true and correct copy of a resolution passed by the Legislature of the State of Iowa, and approved February 21, 1872, as the same appears from the original roll in this office.

In witness whereof, I have hereunto set my hand and caused the great seal of the State to be affixed.

Done at Des Moines, this twenty-third day of February, A. D. 1872.

[SEAL.]

ED. WRIGHT,  
Secretary of State.

In pursuance of the object and intent of the foregoing resolution, which is made a part of this agreement, I, C. C. Carpenter, Governor of the State of Iowa, do by these presents stipulate with R. P. Lowe of Keokuk, Iowa, that, in consideration that he, the said Lowe, shall diligently and to the best of his ability prosecute and collect the claim specified in said resolution, and upon the terms therein contemplated, that he, the said Lowe, shall have and be entitled to receive for his services in the premises thirty-three and one third per cent upon the amount so collected, provided there shall be no charge whatever to the State, either for expenses or services, in case of failure.

February 24, 1872.

C. C. CARPENTER,  
Governor of Iowa.  
R. P. LOWE.

STATE OF IOWA, ss.

The foregoing contract is hereby modified so as to authorize Edson A. Lowe to assist the said Ralph P. Lowe, his father, as agent thereunder; and in case of the latter's death or inability to act, he, the said Edson A. Lowe, shall become such agent in the room of his said father, and be entitled to receive the same benefit and pay under said contract, if successful, that the said Ralph P. Lowe would have been entitled to.

JNO. H. GEAR,  
Governor of Iowa.

DES MOINES, Iowa, October 8, 1881.

For and in consideration of certain lands sold and conveyed to me by Wm. Leighton and Carleton H. Perry, I have transferred to them, the said Leighton and Perry, by written instruments which they hold, an interest in the within contract, to the amount of \$13,440.

R. P. LOWE.

The following is a memorandum of an agreement, bearing date thirty-first day of May, A. D. 1878, by which I have assigned to Asa Whitehead, of Washington, D. C., and Elijah G. Coffin, of Springfield, Ohio, \$12,000 of my interest in the within agreements, for a good and valuable consideration, which has been fully paid by them.

Attest: WM. A. VAN DUZER.

STATE OF IOWA, EXECUTIVE DEPARTMENT.

To all whom these presents shall come, greeting:

Whereas, Ralph P. Lowe, of Lee County, has been appointed, in pursuance of and in accordance with Joint Resolution Number Five, of the Acts

and Joint Resolutions of the Fourteenth General Assembly of the State of Iowa, approved February 21, 1872, an agent in behalf of this State to prosecute to final decision, before Congress or in the Courts, the claim of this State for the five per cent due to the same from the United States upon the lands in this State disposed of under military warrants, issued to non-commissioned officers, musicians, and privates in the late Mexican war;

Therefore, know ye, that in pursuance of law, I, Cyrus C. Carpenter, Governor of the State of Iowa, in the name and by the authority of the people of the State, do hereby commission him to said office, with full powers and authority to execute and fulfill the duties thereof according to law, and to enjoy all the rights, authorities, privileges, and emoluments thereto legally appertaining for the full term of which he has been appointed, unless this commission be sooner revoked or annulled by lawful authority.

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State of Iowa. Done at Des Moines, this twenty-fourth day of February, in the year of our Lord one thousand eight hundred and seventy-two, of the State of Iowa, the twenty-sixth, and of the Independence of the United States, the ninety-sixth.

By the Governor.

C. C. CARPENTER.

[The Great Seal of the State of Iowa.]

ED. WRIGHT,  
Secretary of State.

I, Henry W. Sohn, a United States Commissioner for the District of Columbia, do hereby certify that the foregoing copies of certain papers have, each and all, been by me carefully compared with the originals thereof this day shown me, and that they are, each and all, full, true, and correct copies of said originals, which are as follows, to wit:

*First*—Modification of contract, signed, C. C. Carpenter, Governor of Iowa, and R. P. Lowe, dated February 21, 1873.

*Second*—Modification of contract, signed, John H. Gear, Governor of Iowa, dated October 8, 1881.

*Third*—Certified copy of a Joint Resolution of General Assembly of Iowa, approved February 20, 1873.

*Fourth*—Certificate of Josiah T. Young, Secretary of State of Iowa, to foregoing copy, dated February 20, 1873.

*Fifth*—Certified copy of Joint Resolution of General Assembly of Iowa, approved February 21, 1872.

*Sixth*—Certificate of Ed. Wright, Secretary of State of Iowa, to foregoing copy, dated February 23, 1872.

*Seventh*—Contract between C. C. Carpenter, Governor of Iowa, and R. P. Lowe, dated February 24, 1872.

*Eighth*—Modification of contract, signed by John H. Gear, Governor of Iowa, dated October 8, 1881.

*Ninth*—Transfer from R. P. Lowe to William Leighton and Carleton H. Perry.

*Tenth*—Assignment of R. P. Lowe to Asa Whitehead and Elijah G. Coffin, memorandum of May 31, 1878.

*Eleventh*—A commission to Ralph P. Lowe, signed C. C. Carpenter, Governor of Iowa, dated February 24, 1872.

In testimony whereof, I have this eighth day of June, A. D. 1886, here-

unto set my hand and affixed my seal, at the City of Washington, in the District of Columbia.

[SEAL.]

HENRY W. SOHON,  
United States Commissioner, District of Columbia.

### EXHIBIT No. 14.

Supreme Court of the United States. Nos. 3 and 4 (original).—October Term, 1883.

No. 3. IN THE MATTER OF THE STATE OF IOWA, PETITIONER.	} Petitions for Writs of Mandamus.
No. 4. IN THE MATTER OF THE STATE OF ILLINOIS, PETITIONER.	

Under the Act of March 3, 1845, ch. 76, relating to the admission of Iowa into the Union, or the Act of April 18, 1818, ch. 67, for the admission of the State of Illinois into the Union, by which "five per cent of the net proceeds" of public lands lying within the State, and afterwards "sold by Congress," shall be reserved and appropriated for certain public uses of the State, the State is not entitled to a percentage on the value of lands disposed of by the United States in satisfaction of military land warrants.

[March 3, 1884.]

Mr. Justice GRAY delivered the opinion of the Court.

These are petitions filed in this Court by each of the States of Iowa and Illinois, at the relation of its Governor, relying upon the provision of an Act of Congress relating to its admission into the Union, by which it was agreed that "five per cent of the net proceeds" of lands lying within the State, and afterwards "sold by Congress," should be appropriated for certain public uses of the State; contending that the State was thereby entitled to five per cent of the value, computed at the rate of one dollar and twenty-five cents per acre, of lands disposed of by Congress in satisfaction of military land warrants; and praying for a writ of mandamus to the Commissioner of the General Land Office, to compel him, in accordance with Section 456 of the Revised Statutes, to state an account between the United States and the State, for the purpose of ascertaining the sum of money so due to the State, and to transmit the account to the Comptroller of the Treasury for his examination and action, to the end that that sum might be allowed and paid by the United States.

The provisions of the Acts of Congress, on which the petitioners rely, are as follows:

The sixth section of the Act of Congress of March 3, 1845, ch. 76, supplemental to the Act of the same day by which the State of Iowa was admitted into the Union, contained, among the propositions offered to the Legislature of the State for its acceptance or rejection, and which, if accepted under the authority conferred on the Legislature by the Convention which framed the Constitution of the State, should be obligatory upon the United States, the following:

*Fifth*—That five per cent of the net proceeds of sales of all public lands lying within the said State, which have been or shall be sold by Congress from and after the admission of said State, after deducting all the expenses incident to the same, shall be appropriated for making public roads and canals within the said State, as the Legislature may direct; *provided*, that the five foregoing propositions herein offered are on the condition that the Legislature of the said State, by virtue of the powers conferred upon it by the Convention which framed the Constitution of the said State, shall provide, by an ordinance, irrevocable without the consent of the United States, that the said State shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regu-

lations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers thereof; and that no tax shall be imposed on lands the property of the United States; and that in no case shall non-resident proprietors be taxed higher than residents; and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the State, whether for State, county, township, or any other purpose, for the term of three years from and after the date of the patents, respectively. (5 Stat. 790.)

The sixth section of the Act of Congress of April 18, 1818, ch. 67, to enable the people of the Illinois Territory to form a Constitution and State Government, and for the admission of the State of Illinois into the Union, contained among the propositions offered to the Convention of the Territory, and which, if accepted by the Convention, should be obligatory upon the United States, the following:

*Third*—That five per cent of the net proceeds of the lands lying within such State, and which shall be sold by Congress from and after the first day of January, one thousand eight hundred and nineteen, after deducting all expenses incident to the same, shall be reserved for the purposes following, viz.: two fifths to be disbursed, under the direction of Congress, in making roads leading to the State; the residue to be appropriated by the Legislature of the State, for the encouragement of learning, of which one sixth part shall be exclusively bestowed on a college or university; *provided always*, that the four foregoing propositions herein offered, are on the conditions that the convention of the said State shall provide, by an ordinance, irrevocable without the consent of the United States, that every and each tract of land sold by the United States from and after the first day of January, one thousand eight hundred and nineteen, shall remain exempt from any tax laid by order or under any authority of the State, whether for State, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale; and further, that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt, as aforesaid, from all taxes, for the term of three years from and after the date of the patents respectively; and that all the lands belonging to the citizens of the United States, residing without the said State, shall never be taxed higher than lands belonging to persons residing therein. (3 Stat. 430, 431.)

By the Act of Congress of March 2, 1855, ch. 139, entitled "An Act to settle certain accounts between the United States and the State of Alabama," it was enacted as follows:

That the Commissioner of the General Land Office be and he is hereby required to state an account between the United States and the State of Alabama, for the purpose of ascertaining what sum or sums of money are due to said State, heretofore unsettled, under the sixth section of the Act of March second, eighteen hundred and nineteen, for the admission of Alabama into the Union; and that he be required to include in said account the several reservations under the various treaties with the Chickasaw, Choctaw, and Creek Indians within the limits of Alabama, and allow and pay to said State five per centum thereon, as in case of other sales. (10 Stat. 630.)

By the Act of June 3, 1857, ch. 104, entitled "An Act to settle certain accounts between the United States and State of Mississippi and other States," it was enacted as follows:

SECTION 1. That the Commissioner of the General Land Office be and he is hereby required to state an account between the United States and the State of Mississippi, for the purpose of ascertaining what sum or sums of money are due to said State, heretofore unsettled, on account of the public lands in said State, and upon the same principle of allowance and settlement as prescribed in the "Act to settle certain accounts between the United States and the State of Alabama," approved the second March, eighteen hundred and fifty-five; and that he be required to include in said account the several reservations under the various treaties with the Chickasaw and Choctaw Indians within the limits of Mississippi, and allow and pay to the said State five per cent thereon, as in case of other sales, estimating the lands at the value of one dollar and twenty-five cents per acre.

SEC. 2. That the said Commissioner shall also state an account between the United States and each of the other States upon the same principles, and shall allow and pay to each State such amount as shall thus be found due, estimating all lands and permanent reservations at one dollar and twenty-five cents per acre. (11 Stat. 200.)

Each petition alleged that the State had accepted the propositions, and faithfully kept and performed on its part the conditions set forth in the Act of admission; that prior to the dates of the passage of the Acts of 1855 and 1857 respectively, the five per cent on the cash sales of the public lands lying within the States of Alabama and Mississippi had been regularly and periodically paid to those States respectively, so that at those dates there were no unsettled accounts growing out of the five per cent clause of the Acts for the admission of those States into the Union, except for lands entered and purchased with military land warrants; and that by the Act of 1857 it was the duty of the Commissioner of the General Land Office, when required to do so, to state an account between the United States and each State upon the same principles of allowance as prescribed in the Act of 1855, and by that Act it was his duty, upon proper application, to state such an account for the purpose of ascertaining what sum or sums of money, theretofore unsettled, under the Act for the admission of the State into the Union, were due to it on account of lands lying within the State, disposed of by the United States for or in the satisfaction and redemption of military land warrants, issued by the United States for military services.

Each petition further alleged that the Government of the United States, in disposing of the public lands by sale in this and other Western States, adopted two methods: one for cash; the other for the redemption of its outstanding military warrants or obligations, calling for a specific quantity of land, issued to the soldiers who had enlisted and served in the different wars of the country, under statutes enacted in advance of their enlistment, and as a compensation for their military services.

Each petition suggested that by the Act of August 14, 1848, ch. 180 (9 Stat. 332), military land warrants were made receivable, at the rate of one dollar and twenty-five cents per acre for the number of acres therein contained, in payment for any of the public lands subject to private entry; and that by the Act of March 22, 1852, ch. 19 (10 Stat. 3), all military land warrants, theretofore and thereafter issued, were made assignable by the persons to whom they were issued, and also made receivable from their assignees, at the rate aforesaid per acre, in payment for any of the public lands located and taken up under the preëmption laws of the United States.

Each petition further alleged that the five per cent had been allowed and paid to the petitioner, at stated and proper periods, on sales for cash, but had been withheld on lands located and purchased with military land warrants; that the sum so withheld amounted to \$881,006 60 in the case of Iowa, and \$595,853 31 in the case of Illinois; that the respondent, though formally requested, had refused to state an account as prayed for; and that the duty of stating such an account was purely ministerial and mandatory in its character, leaving no room for the exercise of his own judgment and discretion in its performance.

Upon each of these petitions a rule to show cause was granted at the last term. The Commissioner of the General Land Office at this term filed an answer, in the nature of a return to each rule, admitting that upon the facts stated in the petition, as modified and explained by the facts set forth below, he refused to state the account prayed for, and alleging that the grounds of his refusal were these:

*First*—That neither the Act of Congress relating to the admission of the State into the Union, nor the Acts of 1855 and 1857, authorized the State to claim a percentage upon public lands disposed of by the United States to the holders of bounty land warrants.

*Second*—That the meaning of those statutes had been established, as between the parties, by the contemporaneous and continuous construction thereof by the General Land Office and the State in numerous and important transactions, each of which suggested a question, if one existed, as to their construction.

In the case of the State of Iowa, the answer alleged that between August, 1848, and July, 1858, eleven different settlements had been made in the General Land Office for the percentage due to the State, covering in all the sum of \$580,710 49, in none of which was the present claim suggested, although from time to time during that period large amounts of the public lands lying within the State had been disposed of by the United States to the holders of such warrants; that this contemporaneous practical construction had governed all transactions with the nineteen States interested in the statutory provision under consideration; that on September 7, 1858, the State of Iowa made a formal demand upon the Secretary of the Interior, as the official superior of the then Commissioner of the General Land Office, to be allowed the percentage now claimed; and that its demand was refused, for the reason stated by the Secretary in the following letter to the Governor of Iowa:

DEPARTMENT OF THE INTERIOR, September 20, 1858.

In reply to your letter of the seventh instant, in relation to the application for an allowance of five per centum, claimed to be due the State of Iowa on military land warrant locations, I have the honor to state that, in my opinion, the Act of 1847, to which you refer, is a bounty land Act, and that no distinction can properly be made between locations made under it and those made under other bounty land laws. The location of warrants issued under the Act of 1847, is not considered as constituting a sale of the public lands, as contemplated by the Act admitting Iowa into the Union. That Act appropriated five per cent of the net proceeds of sales of all public lands for making public roads and canals within the State. There being no net proceeds accruing from locations by military land warrants, the allowance of five per centum on such locations cannot be regarded as having been appropriated or provided for by law.

J. THOMPSON, Secretary.

Governor R. P. Lowe, Iowa.

The answer in the case of the State of Iowa further alleged that this was the only demand ever made by the State of Iowa, or by any other State, upon the Secretary of the Interior or upon the Commissioner of the General Land Office, in accordance with the claim now set up; and that the State of Iowa had ever since practically acquiesced in the construction suggested by the Secretary of the Interior, and had confined its efforts to applications to Congress for a change in the statutes.

In the case of the State of Illinois, the answer alleged that from November, 1830, to September, 1863, thirty-three different settlements had been made, covering in all the sum of \$711,744 82, and of which that made in 1863, for \$1,565 80, was for Indian reservations only, in none of which was the present claim suggested, although from time to time during fifteen or more years of that period large amounts of the public lands lying within the State were disposed of by the United States to holders of bounty land warrants.

Each answer concluded by denying that the petitioner, in any view of the case, was entitled to a writ of mandamus.

The first question argued in each of these cases may be shortly stated thus: Is the State, under the compact made with it by Congress at the time of its admission into the Union, by which "five per cent of the net proceeds" of public lands lying within the State, and "sold by Congress" after such admission, shall be reserved and appropriated for the benefit of the State, entitled to a percentage on the value of lands, not sold by the



United States for cash, but disposed of by the United States in satisfaction of military land warrants?

This question is rendered important by the large sums of money involved, and by the fact that similar stipulations are contained in Acts passed by Congress relating to seventeen other western or southern States, beginning with Section 7 of the Act of April 30, 1802, Chapter 40, for the admission of the State of Ohio into the Union. (2 Stat. 175.)

Upon full consideration of the question, with the aid of the able arguments of counsel, the Court is of opinion that lands disposed of by the United States in satisfaction of military land warrants are not sold, within the meaning of the statutes upon which the petitioners rely.

A sale, in the ordinary sense of the word, is a transfer of property for a fixed price in money or its equivalent. When property or money is transferred or paid as a compensation for service, the property or money may be said to be the price of the service; but it can hardly be said that the service is the price of the property or money, or that the property or money is sold to the person performing the service. Nor can it be said that the pay of an officer or soldier in the army or navy is sold to him by the Government in consideration of a price paid by him.

Land or money, other than current salary or pay, granted by the Government to a person entering the military or naval service of the country, has always been called a bounty; and while it is by no means a gratuity, because the promise to grant it is one of the considerations for which the soldier or sailor enters the service, yet it is clearly distinguishable from salary or pay measured by the time of service. For example, it was held by Lord Mansfield and the Court of King's Bench in 1874, that though the master of an apprentice was entitled by the Act of Parliament of 2 and 3 Anne, Chapter 6, Section 17, to the wages of his apprentice enlisting into the navy, yet the apprentice's share of prize money belonged to himself, and not to his master, because it was not wages, but the bounty of the crown. (*Carsan v. Watts*, 3 Doug. 350; *Eades v. Vandeput*, 4 Doug. 1.) Upon like grounds, it has been held that bounty money paid by the United States, or by a State, city, or town, upon the enlistment of a minor as a soldier, during the recent war, belonged to him, and not to his father or master. (*Banks v. Conant*, 14 Allen, 497; *Kelly v. Sprout*, 97 Mass. 169. See also *Alexander v. Wellington*, 2 Russ. & Myl. 35, 56, 64.)

The learned counsel for the State of Iowa referred to General Washington's Circular Letter of June 8, 1783, to the Governors of the States, and especially to the passage in which he insisted that the half pay and commutation promised by the Congress of the Confederation to the officers of the army, during the war of the Revolution, "should be viewed, as it really was, a reasonable compensation offered by Congress, at a time when they had nothing else to give, to the officers of the army for services, then to be performed; it was the only means to prevent a total dereliction of the service; it was a part of their hire; I may be allowed to say, it was the price of their blood and of your independency; it is therefore more than a common debt; it is a debt of honor; it can never be considered as a pension or gratuity, nor be canceled until it is fairly discharged." But in the very next paragraph he spoke of "the bounties many of the soldiers have received," besides the donation of lands."

The question before us is not whether the promise by the Government of a bounty in land or money to persons entering the military service is a contract for valuable consideration; but whether, when carried into effect, it constitutes a sale by the Government; and it is quite clear that land granted by way of reward for military services has never been treated, in

the legislation of the United States upon the subject, as sold, but has always been considered as analogous to money paid in a gross sum by way of bounty.

By the resolution of September 16, 1776, the Congress of the Confederation resolved that "twenty dollars be given as a bounty" to each non-commissioned officer and private soldier enlisting to serve during the war, and that "Congress make provision for granting lands" to officers and soldiers in certain proportions; "such lands to be provided by the United States," and any necessary expenses in procuring them to be paid and borne by the United States in the same proportion as the other expenses of the war. (2 Journals of Congress, 357.)

The Act of Virginia of December 20, 1783, to cede the Northwest Territory to the United States, and the deed of cession of March 1, 1784, were upon the following conditions: That the territory so ceded should be laid out and formed into States, to be admitted members of the Federal Union. That "a quantity, not exceeding one hundred and fifty thousand acres of land, promised by this State, shall be allowed and granted" to General George Rogers Clark and his officers and soldiers. "That in case the quantity of good lands on the southeast side of the Ohio, upon the waters of the Cumberland River, and between the Green River and Tennessee River, which have been reserved by law for the Virginia troops upon Continental establishment, should, from the North Carolina line bearing in further upon the Cumberland lands than was expected, prove insufficient for their legal bounties, the deficiency should be made up to the said troops in good lands, to be laid off between the rivers Scioto and Little Miami, on the northwest side of the river Ohio, in such proportions as have been engaged to them by the laws of Virginia. That all the lands within the territory so ceded to the United States, and not reserved for or appropriated to any of the before mentioned purposes, or disposed of in bounties to the officers and soldiers of the American army, shall be considered as a common fund for the use and benefit of such of the United States as have become or shall become members of the confederation or federal alliance of the said States." (1 Constitutions and Charters, 427, 428.)

The Acts of Congress, under the Constitution, containing grants of land or money to soldiers, have habitually and repeatedly spoken of them as bounties, using the words "bounty of three months' pay and one hundred and sixty acres of land;" "military bounty lands;" "military land bounties;" "bounty in money and land;" "money bounty;" "bounty of one hundred and sixty acres of land;" "bounty in land;" "bounty right;" "bounty land;" and "military land bounty." (Acts of December 24, 1811, ch. 10, § 2; January 11, 1812, ch. 14, § 12; May 6, 1812, ch. 77; December 12, 1812, ch. 4, § 3; 2 Stat. 669, 673, 729, 788; January 28, 1814, ch. 9, § 2; February 10, 1814, ch. 11, § 4; December 10, 1814, ch. 10, §§ 3-5; 3 Stat. 96, 97, 147; February 11, 1847, ch. 8, § 9; September 28, 1850, ch. 85; 9 Stat. 125, 520. See also *French v. Spencer*, 21 How. 228; *Maxwell v. Moore*, 22 How. 185.) They have never spoken of such grants of lands as sales, or of the lands granted as sold.

The very provisions of the Acts for the admission of the States of Illinois and Iowa into the Union, which are the foundation of the claims now urged, clearly mark the distinction between lands sold for money, and bounty lands granted for military services.

In the Illinois Act, the agreement on the part of the United States is that "five per cent of the net proceeds of the lands lying within such State, and which shall be sold by Congress," "shall be reserved," part "to be disbursed," under the direction of Congress, in making roads leading to the

State, and the rest "to be appropriated," by the Legislature of the State, for the encouragement of learning. And among the conditions to be performed on the part of the State are: First—"that every and each tract of land sold by the United States" shall remain exempt from all State taxation for "five years from and after the day of sale." Second—"that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees or their heirs," be exempt from State taxation for "three years from and after the date of the patents respectively." To hold that "lands sold by Congress" included "bounty lands granted for military services" would make these two conditions contradictory of each other; for "every and each tract of land sold by the United States" was to be absolutely exempt from State taxation for five years, whereas, military bounty lands were to be exempt only while held by the patentees or their heirs, and not exceeding three years.

The Iowa Act manifests the same distinction; for, while it omits the provision exempting "lands sold by the United States" from State taxation, it retains the provision exempting from taxation "bounty lands granted for military services," and it emphasizes the meaning of the leading clause of the proposition, by inserting therein the words "of sales," so as to read "five per cent of the net proceeds of sales of all public lands, lying within the State, which have been or shall be sold by Congress from and after the admission of said State, after deducting all the expenses incident to the same, shall be appropriated for making public roads and canals within the said State, as the Legislature may direct."

When each of these Acts speaks of lands "sold by Congress," "five per cent of the net proceeds" of which shall be reserved, and be "disbursed" or "appropriated" for the benefit of the State in which the land lies, it evidently has in view sales in the ordinary sense, from which the United States receive proceeds, in the shape of money payable into the Treasury, out of which the five per cent may be reserved and paid to the State; and does not intend to include lands promised and granted by the United States as a reward for military service, for which nothing is received into the Treasury. The question depends upon the terms in which the compact between the United States and each State is expressed, and not upon any supposed equity extending those terms to cases not fairly embraced within their meaning.

From the very beginning of our existence as a nation, the reward of military service has been treated as a national object and a public use, to which the national domain might justly and lawfully be applied. As new States have been successively formed out of the territory of the United States, and admitted into the Union, the Acts of admission have reserved, for the making of public highways and other public uses of the State, a twentieth part of the net proceeds of public lands lying within the State, and afterwards sold by the United States. But public lands taken up on military land warrants issued under general laws, passed for the national object of encouraging and rewarding military service, and not limited to any particular State, have no more been regarded as lands sold, for any portion of the value of which the National Government should account to the State in which the lands are actually taken up, than lands reserved and used for forts, arsenals, or lighthouses.

Some reliance is placed by the petitioners upon the Acts of Congress of August 14, 1848, ch. 180, and March 22, 1852, ch. 19, by which military land warrants are made assignable, and are also made receivable, either from the original grantee or from his assignee, in payment for public lands, at the rate of one dollar and twenty-five cents per acre. But the promise

of the United States is made to the soldier at the time of his entering the service, and the grant, in execution of that promise, is made when the warrant is issued to him, and in consideration of services then already performed. At that time, no particular land is transferred to him, nor even the State designated in which the land shall be. The selection of the land, which first determines the State where it is to be taken up, is the act, not of the Government, but of the holder of the warrant. The Government receives no new consideration, and makes no new promise or grant, when the warrant is assigned by the soldier, or when it is actually located by himself or his assignee, and the land and the State in which it lies thereby for the first time designated; and never, at any stage of the transaction, receives into the Treasury any money from any person.

The fact that the Registers and Receivers of the Land Office, performing services in locating military bounty land warrants, are authorized by Section 2 of the Act of 1852 to demand and receive for their services, from the assignees or holders of such warrants, the same compensation "to which they are entitled by law for sales of the public lands for cash, at the rate of one dollar and twenty-five cents per acre," has no tendency to show that the United States, under their agreement to pay to the State five per cent of the net proceeds of lands sold by Congress, are bound to pay five per cent on the value of lands which they have never sold, and for which they have received no money.

The Acts of March 2, 1855, ch. 139, and March 3, 1857, ch. 104, requiring five per cent to be paid to the States on the value of lands included in reservations under treaties with Indian tribes, had reference only to lands reserved to the Indians by stipulations in such treaties. The fact that the words "as in case of other sales" are used in speaking of lands reserved for that purpose, and have never been so applied to lands disposed of in satisfaction of military land warrants, appears to us, so far as it has any bearing, to imply an intention to exclude the latter from the class of lands sold, rather than to include them in this class.

That class of decisions of which *United States v. Watkins*, 97 U. S. 219 is an example, in which, under an Act of Congress, providing that in case lands within territory ceded to the United States, claimed under grants previously made by foreign governments and since confirmed, should be sold by the United States before the confirmation, or could not be surveyed and located, the claimant should be entitled to so much public land in lieu thereof, it was held that lands granted by the United States to settlers thereon were included, rests upon the reasons that the claimant had been deprived of so much of his private property by the act of the United States, and that the statutes *in pari materia* used the words "sold or disposed of." Neither of those reasons is applicable to the cases before us.

The conclusion to which the Court is brought, upon a consideration of the language of the statutes relied on, and of the nature of the subjects to which they refer, accords with the contemporaneous and uniform construction given to them by the executive officers charged with the duty of putting them in force. If the Court had a doubt of the true meaning of their provisions, this practical construction would be entitled to great weight. (*Edwards v. Darby*, 12 Wheat. 206; *United States v. State Bank of North Carolina*, 6 Pet. 29; *United States v. McDaniel*, 7 Pet. 1; *Surgett v. Lapice*, 8 How. 48; *Smythe v. Fiske*, 23 Wall. 374; *United States v. Moore*, 95 U. S. 760; *United States v. Pugh*, 99 U. S. 265; *Swift Co. v. United States*, 105 U. S. 691, 695.)

The petitioners failing to prove any lawful claim against the United States, it becomes unnecessary to determine the further question, discussed

at the bar, whether the writ of mandamus is an appropriate remedy in such cases.

Petitions dismissed.

### EXHIBIT No. 15.

Forty-eighth Congress, first session. S. 796. Calendar No. 682.

In the Senate of the United States. December 18, 1883. Mr. Miller, of California, asked and, by unanimous consent, obtained leave to bring in the following bill; which was read twice and referred to the Committee on Public Lands.

June 9, 1884. Reported by Mr. Plumb, with an amendment, viz.: Insert the part printed in *italics*.

#### A BILL

*Granting to the State of California five per centum of the net proceeds of the sale of public lands in that State.*

WHEREAS, The States of Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, Missouri, Arkansas, Michigan, Florida, Iowa, Wisconsin, Minnesota, Oregon, Kansas, Nevada, Nebraska, and Colorado, constituting the list of all the public land States except California, have each received a certain percentum of the net proceeds of the sales of the public lands situate within their limits, respectively; and whereas, California is the only public land State that has not received any percentum of the net proceeds of the sales of the public lands in said State; therefore

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be and is hereby granted to the State of California five per centum of the net proceeds of the sales of the public lands which have been or may hereafter be made in said State, to aid in the support of the public or common schools of said State; and the sum of money necessary to carry into effect the provisions of this Act is hereby appropriated out of any money in the Treasury not otherwise appropriated.*

### EXHIBIT No. 16.

Forty-eighth Congress, first session. H. R. 111. Printer's No., 111.

In the House of Representatives. December 10, 1883. Read twice, referred to the Committee on the Public Lands, and ordered to be printed.

Mr. Henley introduced the following bill:

#### A BILL

*Granting to the State of California five per centum of the net proceeds of the sale of public lands in that State.*

WHEREAS, The States of Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, Missouri, Arkansas, Michigan, Florida, Iowa, Wisconsin, Minnesota, Oregon, Kansas, Nevada, Nebraska, and Colorado, constituting the list of all the public land States except California, have each received a certain percentum of the net proceeds of the sales of the public lands situ-

ate within their limits, respectively; and whereas, California is the only public land State that has not received any percentum of the net proceeds of the sales of the public lands in said State; therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be and is hereby granted to the State of California, five per centum of the net proceeds of the sales of the public lands which have been or may hereafter be made in said State, to aid in the support of the public or common schools of said State.*

### EXHIBIT No. 17.

1310 CONNECTICUT AVENUE, WASHINGTON, D. C.,  
January 30, 1884.

Honorable JOHN F. MILLER, *United States Senate:*

DEAR SIR: I have the honor to inclose you herewith a statement of facts and argument in support of Senate Bill No. 796, by you introduced in the Senate on December 18, 1883, and by it referred to the Senate Committee on Public Lands. I have the honor to request that you will submit this statement to the Chairman of said committee, and have it filed with said bill, and request that the bill and papers may be referred to the appropriate sub-committee, in order that early action may be had thereon.

Very respectfully,

JOHN MULLAN,  
Agent and Attorney for the State of California.

Relating to Senate Bill No. 796. First session, Forty-eighth Congress.

Forty-eighth Congress, first session.

*In the matter of Senate Bill No. 796.*

### CALIFORNIA FIVE PER CENT BILL.

The object of Senate Bill No. 796, introduced in the United States Senate on December 18, 1883, by Senator Miller of California, has solely for its object to place the State of California upon an equal footing with all other public land States, by extending to her the provisions of a law similar in all respects to existing laws relating to the five per cent of the net proceeds of the sales of the public lands of the United States in the several States. A similar bill, H. R. No. 61, was introduced in the House of Representatives by Hon. C. P. Berry of California, on December 13, 1881; and also Senate Bill No. 311 was introduced in the United States Senate on December 8, 1881, by Senator Farley of California, and reported favorably to the Senate, and without amendment from the Senate Committee on Public Lands, February 20, 1882, by Senator Plumb of Kansas, and which practically passed the Senate by having the provisions therein contained incorporated in the general five per cent bill which passed the Forty-seventh Congress, but all subsequent action thereon was delayed by a motion to reconsider the general bill to which it was attached, or in which it was incorporated, same being a bill "to authorize the Secretary of the Interior to ascertain and certify the amount of land located with military warrants in the States described therein, and for other purposes."

Since the date of the organization of the Government of the United

States, to the present time, it has ever been its policy, *without a single exception*, when creating and admitting new States into the Union, to grant to said States some certain percentum of the net proceeds of the sales of the public lands therein.

The State of California was admitted into the Union September 9, 1850, and in the Act of Congress (U. S. Stat., vol. 9, p. 452) so admitting her, it was declared that she should be admitted on an equal footing with all the other States in all respects whatsoever.

Congress, in Section 3 of said Act of her admission, imposed upon said State the identical obligations and express conditions as then and hitherto imposed upon all new States, to wit: "That California should never interfere with the primary disposal of the *public lands* within its limits, and pass no law and do no act whereby the title of the United States and right to dispose of the same should be impaired or questioned, and that she should never levy any tax or assessment, of any description whatsoever, upon the public domain therein, and that the non-resident proprietors of said lands—citizens of the United States—should not be taxed higher than residents; and that all the navigable waters in said State should be common highways, forever free to all citizens of the United States, without tax, impost, or duty therefor."

Now, these conditions relating to the public lands of the United States in said State, were quite identical with those imposed by Congress upon other new States, and in consideration thereof, and for other good and sufficient reasons appearing, Congress has ever granted to all new public land States a certain percentum of the net proceeds of the sales of the public land therein, the same to be expended either as Congress indicated in the granting Acts, or as the Legislatures of said States, with the consent of Congress, should subsequently best determine.

These grants by Congress have been made either in the enabling Acts of said States, or in their Act of admission, or by some subsequent legislation.

A table is hereto appended, wherein are fully given the dates, volumes, and pages of the United States Statutes wherein Congress has extended to the several States this class of legislation, as applicable to all the so called *public land States*, and also to the thirteen original States. California was admitted into the Union without any enabling Act. The public land laws of the United States were not extended to said State until March 3, 1853 (U. S. Stat., vol. 10, page 244), and no sales of the public lands in said State were reported prior to July 1, 1857.

In view thereof nothing was done until a later date, when the undersigned, as agent and attorney in behalf of said State, requested the honorable Commissioner of the General Land Office to state an account to the United States Treasury Department, *under existing laws*, in behalf of said State, for her five per cent of the net proceeds of the public lands therein. This request was not complied with by said Commissioner, and because, as stated by him, in writing, in reply to my request, that he was not vested with sufficient authority of law to state such an account, and would not be so enabled without additional legislation by Congress.

This last fact was thereupon duly communicated by the undersigned to the proper authorities of California, whereupon the Legislature thereof, by appropriate resolution, memorialized Congress on this subject, and that it take action thereon by appropriate and early legislation.

Copies of this memorial have been duly sent to the California delegation in Congress, and should be now matters of record with the papers relating to this case before your committee.

The California delegation in Congress have sought to execute the will of said State as expressed in said memorial by securing the passage of Senate Bill No. 796.

Copy of this memorial has been filed by the Governor of California, with the Chairman of Public Land Committee in both the Senate and House, under the seal of the Secretary of said State, and the same should be now a matter of record before your committee.

California is the *only public land State to which this provision of law has not yet been extended*.

This claim of the State of California, so long overlooked by Congress, is well founded in equity. Similar claims have never as yet been denied in any single instance to any of the public land States, but, on the contrary, have been invariably granted, and that too by prompt and adequate legislation of Congress whenever properly asked for.

California, through her Legislature, has memorialized Congress that it enact appropriate legislation, by means of which she will be placed on an equal footing with the other public land States, and, as I submit, was intended and provided for in her Act of admission, but the details of same have been overlooked and neglected. It is respectfully submitted that her delegation in Congress, in both Senate and House, will be only executing the views and wishes of said State and of the people thereof, as expressed in their State Legislature, by securing the passage of Senate Bill No. 796.

The matters herein contained have all been by me heretofore laid before the Public Land Committee of both Senate and House of a former Congress in support of this measure, and have received due and favorable attention.

In conclusion, I now very respectfully request that favorable action may be had by the Committee on Public Lands, in order that Congress may enact said bill into a law at the earliest date practicable.

Respectfully submitted.

JOHN MULLAN,  
State Agent and Attorney for the State of California.

1310 Connecticut Avenue, Washington, D. C.

To the Hon. Chairman and members of the Public Land Committee,  
United States Senate.

### EXHIBIT No. 18.

1310 CONNECTICUT AVENUE, WASHINGTON, D. C., }  
January 30, 1884. }

Honorable BARCLAY HENLEY, *United States House of Representatives:*

DEAR SIR: I have the honor to inclose you herewith a statement of facts and argument in support of House Bill No. 111, by you introduced in the House on December 10, 1883; and by it referred to the House Committee on Public Lands. I have the honor to request that you will submit this statement to the Chairman of said committee, and have it filed with said bill, and request that the bill and papers may be referred to the appropriate sub-committee, in order that early action may be had thereon.

Very respectfully,

JOHN MULLAN,  
Agent and Attorney for the State of California.

Relating to H. R. No. 111, first session, Forty-eighth Congress.

Forty-eighth Congress, first session.

*In the matter of House Bill No. 111.*

### CALIFORNIA FIVE PER CENT.

The object of House Bill No. 111, introduced in the House of Representatives on December 10, 1883, by Hon. Barclay Henley of California, has solely for its object to place the State of California upon an equal footing with all other public land States, by extending to her the provisions of a law, similar in all respects to existing laws relating to the five per cent of the net proceeds of the sales for cash of the public lands of the United States in the several States. A similar bill, H. R. No. 61, was introduced in the House of Representatives by Hon. C. P. Berry of California, on December 13, 1881, and also Senate Bill No. 311 was introduced in the United States Senate on December 8, 1881, by Senator Farley of California, and reported favorably to the Senate, and without amendment, from the Senate Committee on Public Lands, February 20, 1882, by Senator Plumb of Kansas, and passed the Senate by having the provisions therein contained incorporated in the general five per cent bill which passed the Forty-seventh Congress, but all subsequent action thereon was delayed by a motion to reconsider the general bill to which it was attached or in which it was incorporated, same being a bill "*To authorize the Secretary of the Interior to ascertain and certify the amount of land located with military warrants in the States described therein and for other purposes.*"

Since the date of the organization of the Government of the United States to the present time, it has ever been its policy, *without a single exception*, when creating and admitting new States into the Union, to grant to said States some certain percentum of the net proceeds of the sales of the public lands therein, as might be made for cash.

The State of California was admitted into the Union September 9, 1850, and in the Act of Congress (U. S. Stats., vol. 9, p. 452) so admitting her, it was declared that she should be admitted on an equal footing with all the other States in all respects whatsoever.

Congress, in Section 3 of said Act of admission, imposed upon said State the identical obligations and express conditions as those and hitherto imposed upon all new States, to wit: "That California should never interfere with the *primary disposal of the public lands* within its limits, and pass no law and do no act whereby the *title* of the United States and right to dispose of the same should be impaired or questioned, and that she should never levy any tax or assessment of any description whatsoever upon the public domain therein, and that the non-resident proprietors of said lands—citizens of the United States—should not be taxed higher than residents; and that all the navigable waters in said State should be common highways, forever free to all citizens of the United States, without tax, impost, or duty therefor."

Now, these conditions relating to the public lands of the United States in said States, were quite identical with those imposed by Congress upon other new States, and in consideration thereof, and for other good and sufficient reasons appearing, Congress has ever granted to all new public land States a certain percentum of the net proceeds of the sales of the public lands made in cash therein, the same to be expended, either as Congress

indicated in the granting Acts, or as the Legislature of said States, with the consent of Congress, should subsequently determine.

These grants by Congress have been made either in the enabling Acts of said States, or in their Act of admission, or by some subsequent legislation.

A table is hereto appended wherein are fully given the dates, volumes, and pages of the United States Statutes, wherein Congress has extended to the several States this class of legislation, as applicable to all the so called *public land States*, and also to the thirteen original States.

California was admitted into the Union without any enabling Act. The public land laws of the United States were not extended to said State until March 3, 1853 (U. S. Stats., vol. 10, p. 244), and no sales of the public lands in said State were reported prior to July 1, 1857.

In view thereof nothing was done until a later date, when the undersigned, as agent and attorney in behalf of said State, requested the honorable Commissioner of the General Land Office to state an account to the United States Treasury Department, under existing laws, in behalf of said State, for the five per cent of the net proceeds of the sale of the public lands therein.

This request was not complied with by said Commissioner, and because, as stated by him in writing, in reply to my request, that he was not vested with sufficient authority of law to state such an account, and would not be so enabled without additional legislation by Congress.

This last fact was, therefore, duly communicated by the undersigned to the proper authorities of California, whereupon the Legislature thereof, by appropriate resolution, memorialized Congress on this subject, and that it take action thereon by appropriate and early legislation.

Copies of this memorial have been duly sent to the California delegation in Congress, and should be now matters of record with the papers relating to this case before your committee.

The California delegation in Congress have sought to execute the will of said State, as expressed in said memorial, by securing the passage of House Bill No. 111.

Copy of this memorial has been filed by the Governor of California with the Chairman of the Public Land Committee in both the Senate and House, under the seal of the Secretary of said State, and the same should now be matter of record before your committee.

*California is the only public land State to which this provision of law has not yet been extended.*

The claim of the State of California, so long overlooked by Congress, is well founded in equity. Similar claims have never as yet been denied in any single instance to any of the *public land States*, but, on the contrary, have been invariably granted, and that, too, by prompt and adequate legislation of Congress whenever properly asked for.

California, through her Legislature, has memorialized Congress that it enact appropriate legislation, by means of which she will be placed on an equal footing with the other public land States, and, as I submit, was intended and provided for in her Act of admission, but the details of same have been overlooked and neglected. It is respectfully submitted that her delegation in Congress, in both Senate and House, will be only executing the views and wishes of said State, and of the people thereof, as expressed in their State Legislature, by securing the passage of House Bill No. 111.

The matters herein contained have all been by me heretofore laid before the Public Land Committee of both Senate and House of a former Con-



gress in support of this measure, and have received due and favorable attention.

In conclusion, I now very respectfully request that favorable action may be had by the Committee on Public Lands, in order that Congress may enact said bill into a law at the earliest date practicable.

Respectfully submitted.

JOHN MULLAN,

State Agent and Attorney for the State of California.

To the honorable Chairman and members of the Public Land Committee, United States House of Representatives.

### EXHIBIT No. 19.

#### RECOVERY OF MONEYS FROM THE UNITED STATES GOVERNMENT.

Information having been received by me that the expenses incurred by this State, and by the citizens of Siskiyou and Modoc Counties, for the suppression of Indian hostilities during the Modoc Indian war of 1872, had never been reimbursed by the General Government, I appointed Captain John Mullan, at Washington City, D. C., to represent said interests, on behalf of this State, before the proper authorities of the United States, for the purpose of securing such reimbursements, and also, for such as were provided for (for California) under the Act of Congress, approved June 22, 1882, authorizing an examination and adjustment of the claims of the States of Kansas, Nevada, California, Oregon, Colorado, Nebraska, and Texas, for repelling invasion and Indian hostilities therein, between April 15, 1861, and June 22, 1882. Since writing the above, I have just been informed by telegraph that success has attended Captain Mullan's efforts, and that the Modoc war bill, reimbursing the State, has passed both houses of Congress.

In addition to the foregoing, I also received information that many of the States intended to petition the General Government for the return of moneys paid by some of them in part, and by others in whole, of the sums assessed to the several States under the Act of Congress, approved August 5, 1861, to pay the interest on the public debt, and for other purposes. The amount assessed to this State, under said Act, was \$254,538 66, which sum has been paid; but a few of the States have paid their assessments in full, others but a portion, and some of them not anything. Equity would demand that all or none should comply with the law.

Deeming the subject of considerable importance, and that the interests of the State required an agent to act in her behalf, with others employed in obtaining an equitable adjustment of these claims, I also authorized Captain Mullan to represent the State before the proper authorities at Washington, and would recommend that these appointments be ratified and confirmed by you, and that you provide for his compensation, to be paid out of the sums he may recover for the State, contingent, however, upon his success, it having been expressly understood that such compensation should be left entirely to your judgment and discretion.

Under an appointment from Surveyor-General William Minis, subject to legislative ratification, Captain Mullan, during the last four years, has endeavored to secure for California five per cent of the net proceeds of the sales of the public lands in this State, and has already made considerable

progress in the same; and it is to be hoped before another Congress shall have adjourned that California may be placed upon an equal footing with all the other public land States in regard to this grant.

I invite your favorable attention to the report of Surveyor-General Shanklin touching this subject, and to the recommendations by him made in regard thereto.

### EXHIBIT No. 20.

#### THE FIVE PER CENT FUND.

I would invite your attention to the law of Congress, approved September 4, 1841, relating to the appropriation of the proceeds of the sales of public lands, etc. This Act named the eight States in which public lands were then for sale, giving said States ten per cent of the net proceeds, and making provision for the distribution of five per cent among certain new States and Territories. But this law did not contemplate a division among other than the twenty-six States and the Territories then existing. No good reason can be shown why California should be excluded from this distribution, for it is a public land State, and has contributed largely to the fund to be distributed among other States. It was evidently an oversight in not putting California upon an equal footing with other States in this matter when she came into the Union. My predecessor, William Minis, taking the same view of the matter that I do, appointed Captain John Mullan as an agent of the State to aid in procuring Congressional legislation that would give us an equitable distribution, and so well has he succeeded, that mainly through his activity in presenting and urging the matter on the attention of our Representatives and before the Land Committees in Congress, that a bill has passed one house and is now pending in the other house, which will, if it becomes a law, give California the share she is justly entitled to in connection with the other States. Captain Mullan has constantly kept this office informed of what he has been doing in the matter.

### EXHIBIT No. 21.

#### ASSEMBLY CONCURRENT RESOLUTION No. 20, RELATIVE TO DIRECTING THE GOVERNOR TO FIX THE COMPENSATION FOR SERVICES RENDERED BY CAPTAIN JOHN MULLAN, IN COLLECTIONS OF CLAIMS DUE THE STATE FROM THE UNITED STATES.

[Adopted March 3, 1883.]

WHEREAS, The Governor and State Surveyor-General of this State have heretofore respectively appointed Captain John Mullan of San Francisco, California, agent and attorney to represent the interests of the State of California before the proper authorities of the United States, at Washington, District of Columbia, in the matter of the claim of this State to the five per cent net proceeds of the sales of the public lands by the United States in this State; and also in the matter of the direct tax levied upon this State by the United States, under the Act of Congress of August sixth, eighteen hundred and sixty-one; and also of her claim arising during the Modoc war, in eighteen hundred and seventy-two; and also under the provisions



of the Act of Congress of June twenty-seventh, eighteen hundred and eighty-two; therefore, be it

*Resolved by the Assembly of California, the Senate concurring,* That the appointments so conferred upon Captain John Mullan by the Governor and Surveyor-General, respectively, are hereby ratified and confirmed; and the Governor of this State be and he is hereby authorized and directed to fix the compensation for services by Captain John Mullan heretofore and that may be by him hereafter rendered, at twenty per cent of each of the sums or claims that may be by him collected from the United States, and to pay to him such per cent out of the moneys that may be collected by him and paid to this State on account of each of the foregoing matters, respectively; provided, however, that this State shall not in any event become liable for any expenses, fees, and salaries, of any nature whatever, other than such contingent commission.

SECTION 2. That the Controller of the State of California be and he is hereby authorized to deliver to Captain John Mullan, or to his authorized agent, all the original vouchers, certificates, and papers of every kind and nature against the Government of the United States, for or on account of each of the foregoing matters, respectively.

SEC. 3. That said Controller shall prepare and take from Captain John Mullan, or from his authorized agent, a receipt in writing, bound in a book, same as he keeps in his office for all such papers as aforesaid, and which shall show what the papers are in each case, the date thereof, by what Board of Examiners passed, the amount and date of the warrant, and in whose favor drawn.

### EXHIBIT No. 22.

Forty-eighth Congress, first session. House of Representatives. Report No. 1969.

### PROCEEDINGS OF SALES OF PUBLIC LANDS.

June 21, 1884—Committed to the Committee of the Whole House on the state of the Union, and ordered to be printed.

Mr. Henley, from the Committee on the Public Lands, submitted the following

#### REPORT.

[To accompany bill H. R. 111.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 111) granting to the State of California five per cent of the net proceeds of the sales of public lands in the State, report as follows:

The object of this bill is to place the State of California upon an equal footing with all the other public land States, by extending to her the provisions of existing laws relating to the five per cent of the net proceeds of the cash sales of public lands in the several public land States, and which laws have been enacted for the benefit of, and which are now and have been heretofore enjoyed by, the other eighteen public land States, respectively, to wit: of Alabama, Arkansas, Colorado, Florida, Indiana, Illinois, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Nebraska, Nevada, Ohio, Oregon, and Wisconsin.

Since the date of the organization of the Government of the United States to the present time it has ever been the uniform policy of Congress, *without a single exception*, either before or at the date when creating and

admitting new public land States into the Union, or subsequent thereto, to grant to said States some certain percentum of the net proceeds of the cash sales of the public lands therein.

The State of California was admitted into the Union September 9, 1850, and in the Act of Congress (United States Statutes, volume 9, page 452) so admitting her, it was declared that she should be admitted on an equal footing with all the other States in all respects whatsoever.

Congress, in section three of said Act of her admission, imposed upon said State the identical obligations and express conditions as then and hitherto imposed upon all new public land States, to wit:

That California should never interfere with the primary disposal of the public lands within its limits, and pass no law and do no act whereby the title of the United States to and right to dispose of the same should be impaired or questioned, and that she should never levy any tax or assessment of any description whatsoever upon the public domain therein, and that the non-resident proprietors of said lands, citizens of the United States, should not be taxed higher than residents; and that all the navigable waters in said State should be common highways, forever free to all citizens of the United States, without tax, impost, or duty therefor.

These conditions relating to the public lands of the United States in said State were quite identical with those imposed by Congress upon other new public land States, and in consideration thereof and for other good and sufficient reasons appearing, Congress has ever *without a single exception*, granted to all the new public land States a certain percentum of the net proceeds of the cash sales of the public lands sold therein; the same to be expended either as Congress indicated or as the Legislatures of said States, with the consent of Congress, should subsequently best determine.

A table is hereto appended and made part hereof, wherein are fully given the dates, volumes, and pages of the statutes by which Congress has extended to the several public land States this class of legislation, applicable to all the public land States, and also showing the proceeds of such sales as were distributed among the thirteen original States of the Union.

California was admitted into the Union September 9, 1850, without any enabling Act, but the public land laws of the United States were not extended to California until March 3, 1853 (United States Statutes, volume 10, page 244), more than two years thereafter, and no sales of the public lands in said State were made and reported prior to July 1, 1857, as shown by the letter of the honorable Commissioner of the General Land Office hereto attached. The State of California, after that date, believing she was already entitled to the benefit of said percentage Acts, heretofore requested the honorable Commissioner of the General Land Office to state an account to the United States Treasury Department in behalf of said State for her five per cent of the net proceeds of the cash sales of the public lands sold therein. This request was not complied with by said Commissioner, and because, as stated by him, he was not vested with sufficient authority of law to state such an account, and would not be so enabled without additional or further legislation by Congress thereon. This last fact having been duly communicated to the proper authorities of the State of California, the Legislature thereof, by appropriate resolution, memorialized Congress on this subject, and petitioned that Congress take further action thereon by appropriate and early legislation in regard thereto, as appears from copy of said memorial hereto attached.

This matter was therefore duly and several times brought to the attention of both branches of Congress. Similar bills were before the House Public Lands Committee during the Forty-sixth and Forty-seventh Con-

gresses, introduced by Hon. C. P. Berry, and in the Senate by Senator Farley of California. Senate Bill No. 311 was favorably reported by the Senate Public Lands Committee on February 20, 1882, and passed the Senate on May 19, 1882, but no action was ever had on this measure in the House.

A similar bill, Senate No. 796, was again introduced by Senator Miller of California, on the eighteenth December, 1883, and was favorably reported from the Senate Public Lands Committee on June 9, 1884, with the amendment following, to wit:

And the sum of money necessary to carry into effect the provisions of this Act is hereby appropriated out of any money in the Treasury not otherwise appropriated.

This claim of the State of California, so long overlooked by Congress, is well founded in equity, similar claims having never as yet been denied in any single instance to any of the public land States, but, on the contrary, have been invariably granted by prompt and adequate legislation whenever properly asked for. The total amounts received by each of the several States up to June 30, 1880, are set forth in tables hereto attached and made a part hereof.

The amount that the State of California would be entitled to receive up to June 30, 1883, under this bill, is \$458,434 50, and as fully set forth in an official statement of the honorable Commissioner of the General Land Office, hereto attached and made a part of this report.

Wherefore your committee concur in recommending the passage of this bill, as amended by the Senate Public Lands Committee on June 9, 1884, in a similar bill, Senate No. 796, by adding thereto the words as follows, to wit:

"And the sum of money necessary to carry into effect the provisions of this Act is hereby appropriated out of any money in the Treasury not otherwise appropriated."

[Forty-eighth Congress, first session. H. R. 111.]

In the House of Representatives. December 10, 1883—Read twice, referred to the Committee on Public Lands, and ordered to be printed.

Mr. Henley introduced the following bill:

#### A BILL

*Granting to the State of California five per centum of the net proceeds of the sale of public lands in that State.*

WHEREAS, The States of Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, Missouri, Arkansas, Michigan, Florida, Iowa, Wisconsin, Minnesota, Oregon, Kansas, Nevada, Nebraska, and Colorado, constituting the list of all the public land States, except California, have each received a certain percentum of the net proceeds of the sales of the public lands situate within their limits, respectively; and whereas, California is the only public land State that has not received any percentum of the net proceeds of the sales of the public lands in said State; therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That there be and is hereby granted to the State of California five per centum of the net proceeds of the sales of the public lands which have been or may hereafter be made in said State, to aid in the support of the public or common schools of said State; and the sum of money necessary to carry into effect the provisions of this Act is hereby appropriated out of any money in the Treasury not otherwise appropriated.

STATE OF CALIFORNIA, DEPARTMENT OF STATE.

I, D. M. Burns, Secretary of State of the State of California, do hereby certify that I have compared the annexed copy of Senate Concurrent Resolution No. 1, adopted February 9, 1881, with the original now on file in my office, and that the same is a correct transcript therefrom, and of the whole thereof.

Witness my hand and the great seal of State, at office in Sacramento, California, the eighteenth day of January, A. D. 1882.

[SEAL]

By THOS. H. REYNOLDS, Deputy.

D. M. BURNS, Secretary of State.

(Chapter 7.)

#### *Senate Concurrent Resolution No. 1, relative to the sale of public lands.*

WHEREAS, The States of Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, Missouri, Arkansas, Michigan, Florida, Iowa, Wisconsin, Minnesota, Oregon, Kansas, Nevada, Nebraska, and Colorado, constituting the entire list of public land States, except California, have each received a certain percentum of the net proceeds of the sales of the public lands situate within their limits, respectively; and whereas, California is the only State of the public land States that has not received any percentum; therefore, be it

*Resolved by the Senate, the Assembly concurring,* First—That the Legislature of California does hereby memorialize Congress to place the State of California upon the same footing as regards the proceeds of the sales of all public lands in said State as the other States named in the preamble; and to give California all the benefits and payments to which said States, or either of them, are entitled under all the Acts of Congress heretofore passed, or that may hereafter be passed, and the same, when granted, to be dedicated to educational purposes.

Second—That our Representatives in Congress are hereby requested, and our Senators instructed, to vote for, and in all honorable ways endeavor to secure the passage of, an Act of Congress granting this State five per centum for said purposes.

Third—That the Governor is hereby requested to forward a copy of this memorial to each Senator and Representative from California in Congress, for his information and favorable action in the premises.

JNO. MANSFIELD,  
President of the Senate.  
W. H. PARKS,  
Speaker of the Assembly.  
D. M. BURNS,  
Secretary of State.

Attest:

Adopted February 9, 1881.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, }  
WASHINGTON, D. C., December 21, 1881. }

SIR: I am in receipt of your letter of the nineteenth instant, inquiring whether any public lands were sold in California prior to July 1, 1857, or not; and in answer thereto have to inform you that the records of this office show that although the offices at Benicia and Los Angeles were open in 1853, no sale was made until July 1, 1857.

Very respectfully,

N. C. McFARLAND, Commissioner.

Hon. C. P. Berry.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, }  
WASHINGTON, D. C., February 7, 1884. }

SIR: I have the honor to acknowledge the receipt, by reference from the Department for report, of letter dated the twenty-second day of January, 1884, from Hon. P. B. Plumb, Chairman of the Committee on Public Lands, United States Senate, inclosing Senate Bill No. 796, granting to the State of California five per cent of the net proceeds of the sale of public lands in the State, and requesting information as to the area sold that would be affected by the bill.

In the Acts of Congress admitting into the Union what are known as public land States, with the exception of that admitting California (September 9, 1850, U. S. Stats., vol. 9, page 452), a provision was included granting to said States two, three, and five per cent, respectively, of the net proceeds derived from the sales of public lands within their limits in aid of certain internal improvements or of public schools.

As the Act admitting California into the Union did not provide for the payment of any percentage of the proceeds of the public lands, no account therefor has been stated in favor of said State.

The amount that would be affected by the passage of the bill referred to, not including the amount derived from any location or disposal of the public lands other than cash sales, including mineral land, to June 30, 1883, is \$9,168,690 13, and five per cent thereof is \$458,434 50. See statement herewith.

I return herewith the letter of Senator Plumb, inclosing Senate Bill No. 796.

Very respectfully,

N. C. McFARLAND, Commissioner.

Hon. H. M. Teller, Secretary of the Interior.

TABLE No. 1.

*Acts of Congress Granting to the several States of the United States certain percentum upon the Net Proceeds of the cash sales of the Public Lands.*

STATES.	Date Granting.	Percentage.	United States Statutes.	
			Vol.	Page.
Alabama.....	September 4, 1841.....	2	5	457
	March 2, 1819.....	3	3	489
	May 3, 1822.....	3	3	674
	July 4, 1836.....	3	5	116
	March 2, 1855.....	5	10	630
	September 4, 1841.....	10	5	453
Arkansas.....	June 23, 1836.....	5	5	58
	September 4, 1841.....	10	5	453
Colorado.....	March 3, 1875.....	5	18	476
Florida.....	March 3, 1845.....	5	5	742
	March 3, 1845.....	5	5	788
	March 3, 1845.....	5	5	742
Iowa.....	March 3, 1845.....	5	5	789
	December 28, 1846.....	5	9	117
	March 2, 1849.....	5	9	349
Illinois.....	April 18, 1818.....	5	3	430
	September 4, 1841.....	10	5	453
Indiana.....	April 11, 1818.....	3	3	424
	April 19, 1816.....	5	3	290
	September 4, 1841.....	10	5	453
Kansas.....	May 4, 1858.....	5	11	270
Louisiana.....	February 20, 1811.....	5	2	643
	September 4, 1841.....	10	5	453
Missouri.....	February 28, 1859.....	2	11	388
	May 3, 1822.....	3	3	674
	March 3, 1820.....	5	3	547
	September 4, 1841.....	10	5	453
Mississippi.....	September 4, 1841.....	2	5	457
	March 1, 1817.....	3	3	348
	May 3, 1822.....	3	3	674
	July 4, 1836.....	5	5	116
	March 3, 1857.....	5	11	200
	September 4, 1841.....	10	5	453
Michigan.....	June 23, 1836.....	5	5	60
	September 4, 1841.....	10	5	453
Minnesota.....	February 26, 1857.....	5	11	167
	May 11, 1858.....	5	11	285
Nebraska.....	April 19, 1864.....	5	13	49
Nevada.....	March 16, 1864.....	5	13	32
Ohio.....	March 3, 1803.....	3	2	226
	April 30, 1802.....	5	2	175
	September 4, 1841.....	10	5	453
Oregon.....	February 14, 1859.....	5	11	384
Wisconsin.....	August 6, 1846.....	5	9	58
	May 29, 1848.....	5	9	233
New Hampshire.....	September 4, 1841.....	10	5	453
Massachusetts.....	September 4, 1841.....	10	5	453
Rhode Island.....	September 4, 1841.....	10	5	453
Connecticut.....	September 4, 1841.....	10	5	453
New York.....	September 4, 1841.....	10	5	453
New Jersey.....	September 4, 1841.....	10	5	453
Pennsylvania.....	September 4, 1841.....	10	5	453
Delaware.....	September 4, 1841.....	10	5	453
Maryland.....	September 4, 1841.....	10	5	453
Virginia.....	September 4, 1841.....	10	5	453
North Carolina.....	September 4, 1841.....	10	5	453
South Carolina.....	September 4, 1841.....	10	5	453
Georgia.....	September 4, 1841.....	10	5	453
Kentucky.....	September 4, 1841.....	10	5	453
Vermont.....	September 4, 1841.....	10	5	453
Tennessee.....	September 4, 1841.....	10	5	453
Maine.....	September 4, 1841.....	10	5	453
District of Columbia.....	September 4, 1841.....	10	5	453

TABLE No. 2.

*Statement of the Total Amounts of Money received by the several States of the United States from the net proceeds of the cash sales of the Public Lands up to June 30, 1880.*

STATES.	A 1.	B 1.	A 2.	B 2.	C.	Total.
Alabama.....	\$17,119 35	\$2,107 71	\$5,248 74	\$649 43	\$1,004,365 57	\$1,029,490 20
Arkansas.....	3,134 60	385 93	1,348 19	143 44	227,359 05	232,371 21
Colorado.....					9,589 73	9,589 73
Connecticut.....	10,845 43	1,335 27				12,180 70
Delaware.....	2,695 30	331 84				3,027 14
Florida.....	1,545 96	190 33			28,975 44	30,711 73
Georgia.....	20,256 43	2,498 94				22,755 37
Illinois.....	16,654 33	2,050 46	29,635 02	2,223 29	712,744 82	765,307 92
Indiana.....	23,994 54	2,954 17	2,883 12	446 30	618,277 50	648,555 63
Iowa.....	1,508 08	185 67			626,075 16	627,768 86
Kansas.....					258,842 11	258,842 11
Kentucky.....	24,731 31	3,044 88				27,776 19
Louisiana.....	9,971 59	1,227 69	2,827 99	141 72	315,612 89	329,781 88
Maine.....	17,554 90	2,161 33				19,716 23
Maryland.....	15,187 54	1,869 88				17,057 42
Massachusetts.....	25,807 93	3,177 43				28,985 35
Michigan.....	7,426 03	914 28	1,141 79	247 47	471,344 55	481,074 12
Minnesota.....					90,409 47	99,409 47
Mississippi.....	10,410 19	1,281 69	2,396 26		987,832 28	1,001,920 42
Missouri.....	12,608 57	1,552 35	8,388 24	697 39	551,423 83	574,670 38
Nebraska.....					116,578 67	116,578 67
Nevada.....					8,319 84	8,319 84
New Hampshire.....	9,955 64	1,225 72				11,181 36
New Jersey.....	13,050 42	1,606 75				14,657 17
New York.....	84,974 15	10,461 89				95,436 04
North Carolina.....	22,917 97	2,821 63				25,739 60
Ohio.....	53,157 53	6,544 67	923 64	420 49	596,634 10	657,680 43
Oregon.....					34,911 09	34,911 09
Pennsylvania.....	60,313 27	7,425 68				67,738 95
Rhode Island.....	3,807 28	468 75				4,276 03
South Carolina.....	16,218 15	1,996 75				18,214 90
Tennessee.....	26,447 68	3,256 20				29,703 88
Vermont.....	10,213 61	1,257 48				11,471 09
Virginia.....	37,090 48	4,566 52				41,657 00
Wisconsin.....	1,082 45	133 27			455,253 73	456,469 45
Dist. of Columbia.....	1,463 53	180 19				1,643 72

TABLE No. 3—A 1.

Statement showing the respective Shares of the several States and Territories of the United States and the District of Columbia under the Distribution Act of fourth September, 1841, of the residue of the net proceeds of the cash sale of the Public Lands sold in the half year ending thirtieth June, 1842.

STATES, TERRITORIES, AND DISTRICT OF COLUMBIA.	Free Population.	Slaves.	Federal Numbers.	Distributive Shares.
Maine .....	501,793	0	501,793	\$17,554 90
New Hampshire .....	284,573	1	284,574	9,955 64
Massachusetts .....	737,698	1	737,699	25,807 92
Rhode Island .....	108,825	5	108,828	3,807 28
Connecticut .....	309,998	17	310,008	10,845 43
Vermont .....	291,948	0	291,948	10,213 61
New York .....	2,428,917	4	2,428,919	84,974 15
New Jersey .....	372,632	674	373,036	13,050 42
Pennsylvania .....	1,723,969	64	1,724,007	60,313 27
Delaware .....	75,480	2,605	77,043	2,695 80
Maryland .....	380,282	89,737	434,124	15,187 54
Virginia .....	790,810	448,987	1,060,202	37,090 48
North Carolina .....	507,602	245,817	655,092	22,917 97
South Carolina .....	267,360	327,038	463,583	16,218 15
Georgia .....	410,448	280,944	579,014	20,256 43
Alabama .....	337,224	253,532	489,343	17,119 35
Mississippi .....	180,440	195,211	297,567	10,410 19
Louisiana .....	183,959	168,452	285,030	9,971 59
Tennessee .....	646,151	183,059	755,986	26,447 68
Kentucky .....	597,570	182,258	706,925	24,731 31
Ohio .....	1,519,464	3	1,519,466	53,157 53
Indiana .....	685,863	3	685,865	23,994 54
Illinois .....	475,852	331	476,051	16,654 33
Missouri .....	325,462	58,240	360,406	12,608 57
Arkansas .....	77,639	19,935	89,600	3,134 60
Michigan .....	212,267	0	212,267	7,426 03
Wisconsin .....	30,934	11	30,941	1,082 45
Iowa .....	43,096	16	43,106	1,508 03
Florida .....	28,760	25,717	44,190	1,545 96
District of Columbia .....	39,018	4,694	41,834	1,463 53
Totals .....	14,576,034	2,487,356	16,068,447	\$562,144 18

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, }  
WASHINGTON, D. C., April 14, 1882. }

I hereby certify that I have caused the foregoing table to be examined and compared with the records of this office, and find it to be correct.

N. C. McFARLAND, Commissioner.

TABLE No. 4—B 1.

Statement showing the respective Shares of the several States and Territories of the United States and the District of Columbia, under the Distribution Act of fourth September, 1841, of the residue of the net proceeds of the cash sale of the Public Lands sold from the first day of July to the twenty-ninth of August, 1842, inclusive.

STATES, TERRITORIES, AND DISTRICT OF COLUMBIA.	Free Population.	Slaves.	Federal Numbers.	Distributive Shares.
Maine .....	501,793	-----	501,793	\$2,161 33
New Hampshire .....	284,573	1	284,574	1,225 72
Massachusetts .....	737,698	1	737,699	3,177 43
Rhode Island .....	108,825	5	108,828	468 75
Connecticut .....	309,998	17	310,008	1,335 27
Vermont .....	291,948	-----	291,948	1,257 48
New York .....	2,428,917	4	2,428,919	10,461 89
New Jersey .....	372,632	674	378,036	1,666 75
Pennsylvania .....	1,723,969	64	1,724,007	7,425 68
Delaware .....	75,480	2,605	77,043	831 84
Maryland .....	380,282	89,737	434,124	1,869 88
Virginia .....	790,810	448,987	1,060,202	4,566 52
North Carolina .....	507,602	245,817	655,092	2,821 63
South Carolina .....	267,360	327,038	463,583	1,996 75
Georgia .....	410,448	280,944	579,014	2,493 94
Alabama .....	337,224	253,532	489,343	2,107 71
Mississippi .....	180,440	195,211	297,567	1,281 69
Louisiana .....	183,959	168,452	285,030	1,227 69
Tennessee .....	646,151	180,059	755,986	3,256 20
Kentucky .....	597,570	182,258	706,925	3,044 88
Ohio .....	1,519,464	3	1,519,466	6,544 67
Indiana .....	685,863	3	685,865	2,954 17
Illinois .....	475,852	331	476,051	2,050 46
Missouri .....	325,462	58,240	360,406	1,552 35
Arkansas .....	77,639	19,935	89,600	385 93
Michigan .....	212,267	-----	212,267	914 28
Wisconsin .....	30,934	11	30,941	133 27
Iowa .....	43,096	16	43,106	185 67
Florida .....	28,760	25,717	44,190	190 33
District of Columbia .....	39,018	4,694	41,834	180 19
Totals .....	14,576,034	2,487,356	16,068,447	\$69,210 35

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, }  
WASHINGTON, D. C., April 14, 1882. }

I hereby certify that I have caused the foregoing table to be examined and compared with the records of this office, and find it to be correct.

N. C. McFARLAND, Commissioner.

TABLE No. 5—A 2.

*Statement of the Additional Allowance to the States of Ohio, Indiana, Illinois, Missouri, Arkansas, Louisiana, Mississippi, Alabama, and Michigan of ten per cent of the net proceeds of the cash sale of the Public Lands sold in the half year ending thirtieth June, 1842, under the Distribution Act of September 4, 1841, according to the mode prescribed by the First Comptroller of the Treasury.*

STATES AND TERRITORIES.	Gross proceeds of Lands sold in States and Territories.	Proportion of Expenses to be deducted.	Net proceeds of Sales after deducting proportion of Expenses from gross proceeds.	Additional allowance of ten per cent to each of the new States on net proceeds of Sales therein.
Ohio .....	\$12,534 27	\$3,297 88	\$9,236 39	\$923 64
Indiana .....	39,125 53	10,294 29	28,831 24	2,883 12
Illinois .....	402,163 06	105,812 86	296,250 20	29,635 02
Missouri .....	113,832 94	29,950 51	83,882 43	8,388 24
Arkansas .....	18,295 69	4,813 78	13,481 91	1,348 19
Louisiana .....	38,377 32	10,097 43	28,279 89	2,827 99
Mississippi .....	32,518 52	8,555 92	23,962 60	2,396 26
Alabama .....	71,228 19	18,740 80	52,487 39	5,248 74
Michigan .....	15,494 68	4,076 79	11,417 89	1,141 79
Wisconsin .....	743,570 20	195,640 26	547,929 94	54,792 99
Iowa .....	93,646 50	24,639 27	69,207 23	6,920 73
Totals .....	\$837,216 70	\$220,279 53	\$616,937 17	\$61,693 77

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, }  
WASHINGTON, D. C., April 14, 1882. }

I hereby certify that I have caused the foregoing table to be examined and compared with the records of this office, and find it to be correct.

N. C. McFARLAND, Commissioner.

TABLE No. 6—B 2.

*Statement of the Additional Allowance to the States of Ohio, Indiana, Illinois, Missouri, Arkansas, Louisiana, Mississippi, Alabama, and Michigan, of the ten per cent of the net proceeds of the cash sale of the Public Lands sold therein, respectively, from the first day of July to the twenty-ninth of August, 1842, inclusive, under the Distribution Act of September 4, 1841, according to the mode prescribed by the First Comptroller of the Treasury.*

STATES AND TERRITORIES.	Gross proceeds of Sales in the States and Territories, deducting proportion of \$5 43 excess of repay in Mississippi.	Proportion of Expenses deducted from gross proceeds.	Net proceeds of Sales after deducting from gross proceeds the proportion of Expenses as stated.	Additional allowance to the above mentioned States of ten per cent of net proceeds of Lands sold therein.
Ohio .....	\$7,286 63	\$3,081 76	\$4,204 87	\$420 49
Indiana .....	7,733 95	3,270 95	4,463 00	446 30
Illinois .....	38,527 51	16,294 59	22,232 92	2,223 29
Missouri .....	12,085 07	5,111 19	6,973 88	697 39
Arkansas .....	2,485 73	1,051 30	1,434 43	143 44
Louisiana .....	2,455 96	1,038 71	1,417 25	141 72
Alabama .....	11,253 99	4,759 69	6,494 30	649 43
Michigan .....	4,288 38	2,813 70	2,474 68	247 47
Totals .....	\$86,117 22	\$36,421 89	\$49,695 33	\$4,969 53

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, }  
WASHINGTON, D. C., April 14, 1882. }

I hereby certify that I have caused the foregoing table to be examined and compared with the records of this office, and find it to be correct.

N. C. McFARLAND, Commissioner.

TABLE No. 7—C.

*Statement of the Amounts which have accrued to the following named States up to the thirtieth June, 1880, on account of the two, three, and five per cent upon the net proceeds of the cash Sales of the Public Land within their respective limits.*

STATES.	Two Per Cent.	Three Per Cent.	Five Per Cent.	Aggregate.
Alabama .....	\$401,782 23	\$602,583 34		\$1,004,365 57
Arkansas .....			\$227,359 05	227,359 05
Colorado .....			9,589 73	9,589 73
Florida .....			28,975 44	28,975 44
Iowa .....			626,075 16	626,075 16
Illinois .....		712,744 82		712,744 82
Indiana .....		618,277 50		618,277 50
Kansas .....			258,842 11	258,842 11
Louisiana .....			315,612 89	315,612 89
Mississippi .....	395,142 08	592,690 20		987,832 28
Missouri .....	15,587 78	535,836 05		551,423 83
Michigan .....			471,344 55	471,344 55
Minnesota .....			99,409 47	99,409 47
Nevada .....			8,319 84	8,319 84
Nebraska .....			116,578 67	116,578 67
Oregon .....			34,911 09	34,911 09
Ohio .....		596,634 10		596,634 10
Wisconsin .....			455,253 73	455,253 73
Totals .....	\$812,512 09	\$3,658,766 01	\$2,652,271 73	\$7,123,549 83

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, }  
WASHINGTON, D. C., April 14, 1882. }

I hereby certify that I have caused the foregoing table to be examined and compared with the records of this office, and find it to be correct.

N. C. McFARLAND, Commissioner.

### EXHIBIT No. 22½.

Forty-eighth Congress, first session. H. R. 7235.

In the Senate of the United States. June 16, 1884—Referred to the Committee on Appropriations, and ordered to be printed.

### AMENDMENT.

Intended to be proposed by Mr. Miller, of California, to the bill (H. R. 7235) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June thirtieth, eighteen hundred and eighty-four, and for prior years, and for those certified as due by the accounting officers of the Treasury, in accordance with section four of the Act of June fourteenth, eighteen hundred and seventy-eight, heretofore paid from permanent appropriations, and for other purposes, viz.: On page 40, at the end of line 107, insert the following:

"To pay to the State of California, on account of five per centum of the net proceeds of the cash sales of the public lands in said State prior to June thirtieth, eighteen hundred and eighty-three, the sum of four hundred and fifty-eight thousand four hundred and thirty-four dollars and fifty cents."

**EXHIBIT No. 23.**

Forty-ninth Congress, first session. S. 994. Calendar No. 196.

In the Senate of the United States. January 11, 1886—Mr. Stanford introduced the following bill, which was read twice and referred to the Committee on Public Lands. February 15, 1886—Reported by Mr. Dolph with amendments, viz.: Omit the part struck through and insert the parts printed in *italics*.

**A BILL**

*Granting to the State of California five per centum of the net proceeds of the sales of public lands in said State.*

WHEREAS, The States of Ohio, Louisiana, Mississippi, Illinois, Alabama, Missouri, Arkansas, Michigan, Florida, Iowa, Wisconsin, Minnesota, Oregon, Kansas, Nevada, Nebraska, and Colorado, constituting the list of all the public land States except California, have each received a certain per centum of the net proceeds of the sales of the public lands situate within their limits, respectively; and whereas, California is the only public land State that has not received any percentum of the net proceeds of the sales of the public lands in said State; therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That there be and is hereby granted to the State of California five per centum of the net proceeds of the sales of the public lands which have been made by the United States since the admission of said State or may hereafter be made in said State to aid in the support of the public or common schools of said State; and the sum of money necessary to pay said five per centum to said State is hereby appropriated out of any money in the Treasury not otherwise appropriated.*

**EXHIBIT No. 24.**

Forty-ninth Congress, first session. H. R. 150. Report No. 994.

In the House of Representatives. December 21, 1885—Read twice, referred to the Committee on the Public Lands, and ordered to be printed. March 10, 1886—Reported with amendments, committed to the Committee of the Whole House on the state of the Union, and ordered to be printed. Omit the part struck through and insert the parts printed in *italics*.

Mr. Henley introduced the following bill:

**A BILL**

*Granting to the State of California five per centum of the net proceeds of the sales of public lands in said State.*

WHEREAS, The States of Ohio, Louisiana, Mississippi, Illinois, Alabama, Missouri, Arkansas, Michigan, Florida, Iowa, Wisconsin, Minnesota, Oregon, Kansas, Nevada, Nebraska, and Colorado, constituting the list of all the public land States except California, have each received a certain percentum of the net proceeds of the sales of the public lands situate within their limits, respectively; and whereas, California is the only public land

State that has not received a certain percentum of the net proceeds of the sales of the public lands in said State; therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be and is hereby granted to the State of California five per centum of the net proceeds of the sales of the public lands which have been made by the United States since the admission of said State, or may hereafter be made in said State, to aid in the support of the public or common schools of said State; and the sum of money necessary to pay said five per centum to said State is hereby appropriated out of any money in the Treasury not otherwise appropriated.*

**EXHIBIT No. 25.**

Forty-ninth Congress, first session. House of Representatives. Report No. 994.

**PROCEEDS OF SALES OF PUBLIC LANDS.**

March 10, 1886—Committed to the Committee of the Whole House on the state of the Union, and ordered to be printed.

Mr. Henley, from the Committee on Public Lands, submitted the following

**REPORT.**

[To accompany bill H. R. 150.]

The Committee on Public Lands, to whom was referred the bill (H. R. 150) granting to the State of California five per cent of the net proceeds of the sales of public lands in said State, make the following report:

This bill is in accord with settled legislative precedents followed and adhered to by Congress in the case of every public land State heretofore admitted into the Union. This bill makes no grant other than or different from that made by Congress to every public land State in the Union, but simply places California upon an equal footing and upon the same plane with all other public land States in regard to existing laws relating to the five per cent of the net proceeds of the sales of the public lands in said States, respectively.

A bill similar to this has been heretofore favorably reported from the Public Lands Committee in the House in a prior Congress, and in the Senate at three different times, to wit, during the Forty-seventh, Forty-eighth, and Forty-ninth Congresses, but never acted upon in either House or Senate during either of said Congresses, and because said Congresses in every instance adjourned before reaching said bills on the calendar of either body.

The Committee on the Public Lands of the Forty-eighth Congress made an elaborate report on the matters contained in this bill, and which report, to wit, Report No. 1969, Forty-eighth Congress, first session, your committee now adopt and make and now submit the same as a part of this report.

The committee recommend an amendment to said bill by inserting in line five after the word "been" the words "made by the United States since the admission of said State;" and also amend in line eight by striking out the words "carry into effect the provisions of this Act," and in lieu thereof inserting the words "pay said five per centum to said State," which amendments harmonize with the amendments as recommended in a similar bill reported to the Senate from the Committee on Public Lands, February 15, 1886.



And so amended, your committee recommend the passage of the bill.

[House Report No. 1969, Forty-eighth Congress, first session.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 111) granting to the State of California five per cent of the net proceeds of the sales of public lands in that State, report as follows:

The object of this bill is to place the State of California upon an equal footing with all the other public land States, by extending to her the provisions of existing laws relating to the five per cent of the net proceeds of the cash sales of public lands in the several public land States, and which laws have been enacted for the benefit of, and which are now and have been heretofore enjoyed by, the other eighteen public land States, respectively, to wit: of Alabama, Arkansas, Colorado, Florida, Indiana, Illinois, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Nebraska, Nevada, Ohio, Oregon, and Wisconsin.

Since the date of the organization of the Government of the United States to the present time it has ever been the uniform policy of Congress, *without a single exception*, either before or at the date when creating and admitting new public land States into the Union, or subsequent thereto, to grant to said States some certain percentum of the net proceeds of the cash sales of the public lands therein.

The State of California was admitted into the Union September 9, 1850, and in the Act of Congress (United States Statutes, volume 9, page 452) so admitting her, it was declared that she should be admitted on an equal footing with all the other States in all respects whatsoever.

Congress, in Section 3 of said Act of her admission, imposed upon said State the identical obligations and express conditions as then and hitherto imposed upon all new public land States, to wit:

"That California should never interfere with the primary disposal of the public lands within its limits, and pass no law, and do no act whereby the title of the United States to and right to dispose of the same should be impaired or questioned, and that she should never levy any tax or assessment of any description whatsoever upon the public domain therein, and that the non-resident proprietors of said lands—citizens of the United States—should not be taxed higher than residents; and that all the navigable waters in said State should be common highways, forever free to all citizens of the United States, without tax, impost, or duty therefor."

These conditions relating to the public lands of the United States in said State were quite identical with those imposed by Congress upon other new public land States, and in consideration thereof and for other good and sufficient reasons appearing, Congress has ever, *without a single exception*, granted to all the new public land States a certain percentum of the net proceeds of the cash sales of public lands sold therein; the same to be expended either as Congress indicated or as the Legislatures of said States, with the consent of Congress, should subsequently best determine.

A table is hereto appended and made a part hereof, wherein are fully given the dates, volumes, and pages of the statutes by which Congress has extended to the several public land States this class of legislation, applicable to all the public land States, and also showing the proceeds of such sales as were distributed among the thirteen original States of the Union.

California was admitted into the Union September 9, 1850, without any enabling Act, but the public land laws of the United States were not extended to California until March 3, 1853 (United States Statutes, volume 10, page 244), more than two years thereafter, and no sales of the public lands in said State were made and reported prior to July 1, 1857, as shown by the letter of the honorable Commissioner of the General Land Office, hereto attached. The State of California, after that date, believing she was already entitled to the benefit of said percentage Acts, heretofore requested the honorable Commissioner of the General Land Office to state an account to the United States Treasury Department in behalf of said State for her five per cent of the net proceeds of the cash sales of the public lands sold therein. This request was not complied with by said Commissioner, and because, as stated by him, he was not vested with sufficient authority of law to state such an account, and would not be so enabled without additional or further legislation by Congress thereon. This last fact having been duly communicated to the proper authorities of the State of California, the Legislature thereof, by appropriate resolution, memorialized Congress on this subject, and petitioned that Congress take further action thereon by appropriate and early legislation in regard thereto, as appears from copy of said memorial hereto attached.

This matter was therefore duly and several times brought to the attention of both branches of Congress. Similar bills were before the House Public Lands Committee during the Forty-sixth and Forty-seventh Congresses, introduced by Hon. C. P. Berry, and in the Senate by Senator Farley of California. Senate Bill No. 311 was favorably reported by the Senate Public Lands Committee on February 20, 1882, and passed the Senate on May 19, 1882, but no action was ever had on this measure in the House.

A similar bill, Senate No. 796, was again introduced by Senator Miller of California, on the eighteenth December, 1883, and was favorably reported from the Senate Public Lands Committee on June 9, 1884, with the amendment following, to wit:

"And the sum of money necessary to carry into effect the provisions of this Act is hereby appropriated out of any money in the Treasury not otherwise appropriated."

This claim of the State of California, so long overlooked by Congress, is well founded in equity, similar claims having never as yet been denied in any single instance to any of the public land States, but, on the contrary, have been invariably granted by prompt and adequate legislation whenever properly asked for. The total amounts received by each of the several States, up to June 30, 1880, are set forth in tables hereto attached and made a part hereof.

The amount that the State of California would be entitled to receive, up to June 30, 1883, under this bill, is \$458,434 50, and as fully set forth in an official statement of the honorable Commissioner of the General Land Office, hereto attached and made a part of this report.

Wherefore your committee concur in recommending the passage of this bill as amended by the Senate Public Lands Committee on June 9, 1884, in a similar bill, Senate No. 796, by adding thereto the words as follows, to wit:

"And the sum of money necessary to carry into effect the provisions of this Act is hereby appropriated out of any money in the Treasury not otherwise appropriated."

Forty-eighth Congress, first session. H. R. 111.

In the House of Representatives. December 10, 1883—Read twice, referred to the Committee on the Public Lands, and ordered to be printed.

Mr. Henley introduced the following bill:

#### A BILL

*Granting to the State of California five per centum of the net proceeds of the sale of public lands in that State.*

WHEREAS, The States of Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, Missouri, Arkansas, Michigan, Florida, Iowa, Wisconsin, Minnesota, Oregon, Kansas, Nevada, Nebraska, and Colorado, constituting the list of all the public land States, except California, have each received a certain percentum of the net proceeds of the sales of the public lands situate within their limits, respectively; and whereas, California is the only public land State that has not received any percentum of the net proceeds of the sales of the public lands in said State; therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That there be, and is hereby, granted to the State of California five per centum of the net proceeds of the sales of the public lands which have been or may hereafter be made in said State, to aid in the support of the public or common schools of said State; and the sum of money necessary to carry into effect the provisions of this Act is hereby appropriated out of any money in the Treasury not otherwise appropriated.

STATE OF CALIFORNIA, DEPARTMENT OF STATE.

I, D. M. Burns, Secretary of State of the State of California, do hereby certify that I have compared the annexed copy of Senate Concurrent Resolution No. 1, adopted February 9, 1881, with the original now on file in my office, and that the same is a correct transcript therefrom and of the whole thereof.

Witness my hand and the great seal of State, at office in Sacramento, Cal., the eighteenth day of January, A. D. 1882.

D. M. BURNS,  
Secretary of State.

[SEAL.]

By THOS. H. REYNOLDS, Deputy.

(Chapter 7.)

*Senate Concurrent Resolution No. 1, relative to the sale of public lands.*

WHEREAS, The States of Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, Missouri, Arkansas, Michigan, Florida, Iowa, Wisconsin, Minnesota, Oregon, Kansas, Nevada, Nebraska, and Colorado, constituting the entire list of public land States, except California, have each received a certain percentum of the net proceeds of the sales of the public lands situate within their limits, respectively; and whereas, California is the only State of the public land States that has not received any percentum; therefore, be it

*Resolved by the Senate, the Assembly concurring*, First—That the Legislature of California does hereby memorialize Congress to place the State of California upon the same footing as regards the proceeds of the sales of all public lands in said State as the other States named in the preamble, and to give California all the benefits and payments to which said States, or either of them, are entitled under all Acts of Congress heretofore passed, or that may hereafter be passed, and the same, when granted, to be dedicated to educational purposes.

Second—That our Representatives in Congress are hereby requested, and our Senators instructed, to vote for and in all honorable ways endeavor to secure the passage of an Act of Congress granting this State five per centum for said purposes.

Third—That the Governor is hereby requested to forward a copy of this memorial to each Senator and Representative from California in Congress, for his information and favorable action in the premises.

W. H. PARKS,  
Speaker of the Assembly.  
JNO. MANSFIELD,  
President of the Senate.  
D. M. BURNS,  
Secretary of State.

Attest:

Adopted February 9, 1881.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,  
WASHINGTON, D. C., December 21, 1881.

SIR: I am in receipt of your letter of the nineteenth instant, inquiring whether any public lands were sold in California prior to July 1, 1857, or not: and in answer thereto I have to inform you that the records of this office show that, although the offices at Benicia and Los Angeles were open in 1853, no sales were made until July 1, 1857.

Very respectfully,

N. C. McFARLAND, Commissioner.

Hon. C. P. Berry.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,  
WASHINGTON, D. C., February 7, 1884.

SIR: I have the honor to acknowledge the receipt, by reference from the Department for report, of letter dated the twenty-second day of January, 1884, from Hon. P. B. Plumb, Chairman of the Committee on Public Lands, United States Senate, inclosing Senate Bill No. 796, granting to the State of California five per cent of the net proceeds of the sale of public lands in the State, and requesting information as to the area sold that would be affected by the bill.

In the Acts of Congress admitting into the Union what are known as public land States, with the exception of that admitting California (September 9, 1850, U. S. Stats., vol. 9, page 452), a provision was included granting to said States two, three, and five per cent, respectively, of the net proceeds derived from the sales of public lands within their limits in aid of certain internal improvements or of public schools.

As the Act admitting California into the Union did not provide for the payment of any percentage of the proceeds of the public lands, no account therefor has been stated in favor of said State.

The amount that would be affected by the passage of the bill referred to, not including the amount derived from any location or disposal of the public lands other than cash sales, including mineral land, to June 30, 1883, is \$9,168,690 13, and five per cent thereof is \$458,434 50. See statement herewith.

I return herewith the letter of Senator Plumb, inclosing Senate Bill No. 796.

Very respectfully,

N. C. McFARLAND, Commissioner.

Hon. H. M. Teller, Secretary of the Interior.

TABLE No. 1.

Acts of Congress granting to the several States of the United States certain percentum upon the net proceeds of the cash sales of the Public Lands.

STATES.	Date Granting.	Percentage	U. S. Stats.		STATES.	Date Granting.	Percentage	U. S. Stats.	
			Vol.	Page.				Vol.	Page.
Alabama-----	Sept. 4, 1841.	2	5	457	Mississippi-----	Sept. 4, 1841.	10	5	453
	Mar. 2, 1819.	3	3	489	Michigan-----	June 23, 1836.	5	5	60
	May 3, 1822.	3	3	674		Sept. 4, 1841.	10	5	453
	July 4, 1836.	3	5	116	Minnesota-----	Feb. 26, 1857.	5	11	167
	Mar. 2, 1855.	5	10	630		May 11, 1858.	5	11	285
	Sept. 4, 1841.	10	5	453	Nebraska-----	Apr. 19, 1864.	5	13	49
Arkansas-----	June 23, 1836.	5	5	58	Nevada-----	Mar. 16, 1864.	5	13	32
	Sept. 4, 1841.	10	5	453	Ohio-----	Mar. 3, 1803.	3	2	326
Colorado-----	Mar. 3, 1875.	5	18	476		Apr. 30, 1802.	5	2	175
Florida-----	Mar. 3, 1845.	5	5	742		Sept. 4, 1841.	10	5	453
	Mar. 3, 1845.	5	5	788	Oregon-----	Feb. 14, 1859.	5	11	384
	Mar. 3, 1845.	5	5	742	Wisconsin-----	Aug. 6, 1846.	5	9	58
Iowa-----	Mar. 3, 1845.	5	5	789		May 29, 1848.	5	9	233
	Dec. 28, 1846.	5	9	117	New Hampshire...	Sept. 4, 1841.	10	5	453
	Mar. 2, 1849.	5	9	349	Massachusetts...	Sept. 4, 1841.	10	5	453
Illinois-----	Apr. 18, 1818.	5	3	430	Rhode Island-----	Sept. 4, 1841.	10	5	453
	Sept. 4, 1841.	10	5	453	Connecticut-----	Sept. 4, 1841.	10	5	453
Indiana-----	Apr. 11, 1818.	3	3	424	New York-----	Sept. 4, 1841.	10	5	453
	Apr. 19, 1816.	5	3	290	New Jersey-----	Sept. 4, 1841.	10	5	453
	Sept. 4, 1841.	10	5	453	Pennsylvania-----	Sept. 4, 1841.	10	5	453
Kansas-----	May 4, 1858.	5	11	270	Delaware-----	Sept. 4, 1841.	10	5	453
Louisiana-----	Feb. 20, 1811.	5	2	643	Maryland-----	Sept. 4, 1841.	10	5	453
	Sept. 4, 1841.	10	5	453	Virginia-----	Sept. 4, 1841.	10	5	453
Missouri-----	Feb. 28, 1859.	2	11	388	North Carolina...	Sept. 4, 1841.	10	5	453
	May 3, 1822.	3	3	674	South Carolina...	Sept. 4, 1841.	10	5	453
	Mar. 6, 1820.	5	3	547	Georgia-----	Sept. 4, 1841.	10	5	453
	Sept. 4, 1841.	10	5	453	Kentucky-----	Sept. 4, 1841.	10	5	453
Mississippi-----	Sept. 4, 1841.	2	5	457	Vermont-----	Sept. 4, 1841.	10	5	453
	Mar. 1, 1817.	3	3	348	Tennessee-----	Sept. 4, 1841.	10	5	453
	May 3, 1822.	3	3	674	Maine-----	Sept. 4, 1841.	10	5	453
	July 4, 1836.	5	5	116	Dist. of Columbia.	Sept. 4, 1841.	10	5	453
	Mar. 3, 1857.	5	11	200					

TABLE No. 2.

Statement of the Total Amounts of Money received by the several States of the United States from the net proceeds of the cash sales of the Public Lands up to June 30, 1880.

STATES.	A 1.	B 1.	A 2.	B 2.	C.	Total.
Alabama	\$17,119 35	\$2,107 71	\$5,248 74	\$649 43	\$1,004,365 57	\$1,029,490 20
Arkansas	3,134 60	385 93	1,348 19	143 44	227,359 05	232,371 21
Colorado					9,589 73	9,589 73
Connecticut	10,845 43	1,335 27				12,180 70
Delaware	2,695 30	331 84				3,027 14
Florida	1,545 96	190 33			28,975 44	30,711 73
Georgia	20,256 43	2,493 94				22,750 37
Illinois	16,654 33	2,050 46	29,635 02	2,223 29	712,744 82	763,307 92
Indiana	23,994 54	2,954 17	2,883 12	446 30	618,277 50	648,555 63
Iowa	1,508 03	185 67			626,075 16	627,768 86
Kansas					258,842 11	258,842 11
Kentucky	24,731 31	3,044 88				27,776 19
Louisiana	9,971 59	1,227 69	2,827 99	141 72	315,612 89	329,781 88
Maine	17,554 90	2,161 33				19,716 23
Maryland	15,187 54	1,869 88				17,057 42
Massachusetts	25,807 92	3,177 43				28,985 35
Michigan	7,426 03	914 28	1,141 79	247 47	471,344 55	481,074 12
Minnesota					99,409 47	99,409 47
Mississippi	10,410 19	1,281 69	2,396 26		987,832 28	1,001,920 42
Missouri	12,608 57	1,552 35	8,388 24	697 39	551,423 83	574,670 38
Nebraska					116,578 67	116,578 67
Nevada					8,319 84	8,319 84
New Hampshire	9,955 64	1,225 72				11,181 36
New Jersey	13,050 42	1,606 75				14,657 17
New York	84,974 15	10,461 89				95,436 04
North Carolina	22,917 97	2,821 63				25,739 60
Ohio	53,157 53	6,544 67	923 64	420 49	596,634 10	657,680 43
Oregon					34,911 09	34,911 09
Pennsylvania	60,313 27	7,425 68				67,738 95
Rhode Island	3,807 28	468 75				4,276 03
South Carolina	16,218 15	1,966 75				18,214 90
Tennessee	26,447 68	3,256 20				29,703 88
Vermont	10,213 61	1,257 48				11,471 09
Virginia	37,090 48	4,566 52				41,657 00
Wisconsin	1,082 45	133 27			455,253 73	456,469 45
Dist. of Columbia	1,463 53	180 19				1,643 72

TABLE No. 3—A 1.

Statement showing the respective Shares of the several States and Territories of the United States and the District of Columbia under the Distribution Act of fourth September, 1841, of the residue of the net proceeds of the cash sale of the Public Lands sold in the half year ending thirtieth June, 1842.

STATES, TERRITORIES, AND DISTRICT OF COLUMBIA.	Free Population.	Slaves.	Federal Numbers.	Distributive Shares.
Maine	501,793	0	501,793	\$17,554 90
New Hampshire	284,573	1	284,574	9,995 64
Massachusetts	737,698	1	737,699	25,807 92
Rhode Island	108,825	5	108,828	3,807 28
Connecticut	309,998	17	310,008	10,845 43
Vermont	291,948	0	291,948	10,213 61
New York	2,428,917	4	2,428,919	84,974 15
New Jersey	372,632	674	373,036	13,050 42
Pennsylvania	1,723,969	64	1,724,007	60,313 27
Delaware	75,480	2,605	77,043	2,695 30
Maryland	380,282	89,737	434,124	15,187 54
Virginia	790,810	448,987	1,060,202	37,090 48
North Carolina	507,602	245,817	655,092	22,917 97
South Carolina	267,360	327,038	463,583	16,218 15
Georgia	410,448	280,944	574,014	20,256 43
Alabama	337,224	253,532	489,343	17,119 35
Mississippi	180,440	195,211	297,567	10,410 19
Louisiana	183,959	168,452	285,030	9,971 59
Tennessee	646,151	183,059	755,986	26,447 68
Kentucky	597,570	182,258	706,925	24,731 31
Ohio	1,519,464	3	1,519,466	53,157 53
Indiana	685,863	3	685,865	23,994 54
Illinois	475,852	331	476,051	16,654 33
Missouri	325,462	58,240	360,406	12,608 57
Arkansas	77,639	19,935	89,600	3,134 60
Michigan	212,267	0	212,267	7,426 03
Wisconsin	30,934	11	30,941	1,082 45
Iowa	43,096	16	43,106	1,508 03
Florida	28,760	25,716	44,190	1,515 96
District of Columbia	39,018	4,694	41,834	1,463 53
Totals	14,576,034	2,487,356	16,068,447	\$562,144 18

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, }  
WASHINGTON, D. C., April 14, 1882.

I hereby certify that I have caused the foregoing table to be examined and compared with the records of this office, and find it to be correct.

N. C. McFARLAND, Commissioner.

TABLE No. 4—B.

Statement showing the respective Shares of the several States and Territories of the United States and the District of Columbia, under the Distribution Act of fourth September, 1841, of the residue of the net proceeds of the cash sale of the Public Lands sold from the first day of July to the twenty-ninth of August, 1842, inclusive.

STATES, TERRITORIES, AND DISTRICT OF COLUMBIA.	Free Population.	Slaves.	Federal Numbers.	Distributive Shares.
Maine .....	501,793		501,793	\$2,161 33
New Hampshire .....	284,573	1	284,574	1,225 72
Massachusetts .....	737,698	1	737,699	3,177 43
Rhode Island .....	108,825	5	108,828	468 75
Connecticut .....	309,998	17	310,008	1,335 27
Vermont .....	291,948		291,948	1,257 48
New York .....	2,428,917	4	2,428,919	10,461 89
New Jersey .....	372,632	647	373,036	1,606 75
Pennsylvania .....	1,723,969	64	1,724,007	7,425 68
Delaware .....	75,480	2,605	77,043	331 84
Maryland .....	380,282	89,737	434,124	1,869 88
Virginia .....	790,810	448,987	1,060,202	4,566 52
North Carolina .....	507,602	245,817	655,092	2,821 63
South Carolina .....	267,390	327,038	463,583	1,996 75
Georgia .....	410,448	280,944	579,014	2,493 94
Alabama .....	337,224	253,532	489,343	2,107 71
Mississippi .....	180,440	195,211	297,567	1,281 69
Louisiana .....	183,959	168,452	285,030	1,227 69
Tennessee .....	646,151	180,059	755,986	3,256 20
Kentucky .....	597,570	182,258	706,925	3,044 88
Ohio .....	1,519,464	3	1,519,466	6,544 67
Indiana .....	685,863	3	685,865	2,954 17
Illinois .....	475,852	331	476,051	2,650 46
Missouri .....	325,462	58,240	360,406	1,552 35
Arkansas .....	77,639	19,935	89,600	385 93
Michigan .....	212,267		212,267	914 28
Wisconsin .....	30,934	11	30,941	133 27
Iowa .....	43,096	16	43,106	185 67
Florida .....	28,760	25,717	44,190	190 33
District of Columbia .....	39,018	4,694	41,834	180 19
Totals .....	14,576,034	2,487,356	16,068,447	\$69,210 35

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, }  
WASHINGTON, D. C., April 14, 1882.

I hereby certify that I have caused the foregoing table to be examined and compared with the records of this office, and find it to be correct.

N. C. McFARLAND, Commissioner.

TABLE No. 5—A 2.

Statement of the Additional Allowance to the States of Ohio, Indiana, Illinois, Missouri, Arkansas, Louisiana, Mississippi, Alabama, and Michigan, of ten per cent of the net proceeds of the cash sale of the Public Lands sold in the half year ending thirtieth June, 1842, under the Distribution Act of September 4, 1841, according to the mode prescribed by the First Comptroller of the Treasury.

STATES AND TERRITORIES.	Gross proceeds of Lands Sold in States and Territories.	Proportion of Expenses to be deducted.	Net proceeds of Sales after deducting proportion of Expenses from gross proceeds.	Additional allowance of ten per cent to each of the new States on net proceeds of Sales therein.
Ohio .....	\$12,534 27	\$3,297 88	\$9,236 39	\$923 64
Indiana .....	39,125 53	10,294 29	28,831 24	2,883 12
Illinois .....	402,163 06	105,812 86	296,250 20	29,635 02
Missouri .....	113,832 94	29,950 51	83,882 43	8,388 24
Arkansas .....	18,295 69	4,813 78	13,481 91	1,348 19
Louisiana .....	38,377 32	10,097 43	28,279 89	2,827 99
Mississippi .....	32,518 52	8,555 92	23,962 60	2,396 26
Alabama .....	71,228 19	18,740 80	52,487 39	5,248 74
Michigan .....	15,494 68	4,076 79	11,417 89	1,141 79
Wisconsin .....	743,570 20	195,640 26	547,929 94	
Iowa .....	93,646 50	24,639 27	69,207 23	
Totals .....	\$837,216 70	\$220,279 53	\$616,937 17	\$54,792 99

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, }  
WASHINGTON, D. C., April 14, 1882.

I hereby certify that I have caused the foregoing table to be examined and compared with the records of this office, and find it to be correct.

N. C. McFARLAND, Commissioner.

TABLE No. 6—B 2.

Statement of the Additional Allowance to the States of Ohio, Indiana, Illinois, Missouri, Arkansas, Louisiana, Mississippi, Alabama, and Michigan, of the ten per cent of the net proceeds of the cash sale of the Public Lands sold therein respectively, from the first day of July to the twenty-ninth of August, 1842, inclusive, under the Distribution Act of September 4, 1841, according to the mode prescribed by the First Comptroller of the Treasury.

STATES AND TERRITORIES.	Gross proceeds of Sales in the States and Territories, deducting proportion of \$5 45 excess of repay in Mississippi.	Proportion of Expenses deducted from gross proceeds.	Net proceeds of Sales after deducting from the gross proceeds the proportion of Expenses as stated.	Additional allowance to the above mentioned States of ten per cent of net proceeds of Lands sold therein.
Ohio .....	\$7,286 63	\$3,081 76	\$4,204 87	\$420 49
Indiana .....	7,733 95	3,270 95	4,463 00	446 30
Illinois .....	38,527 51	16,294 59	22,232 92	2,223 29
Missouri .....	12,085 07	5,111 19	6,973 88	697 39
Arkansas .....	2,485 73	1,051 30	1,434 43	143 44
Louisiana .....	2,455 96	1,038 71	1,417 25	141 72
Alabama .....	11,253 99	4,759 69	6,494 30	649 43
Michigan .....	4,288 38	1,813 70	2,474 68	247 47
Totals .....	\$86,117 22	\$36,421 89	\$49,695 33	\$4,969 53

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, }  
WASHINGTON, D. C., April 14, 1882.

I hereby certify that I have caused the foregoing table to be examined and compared with the records of this office, and find it to be correct.

N. C. McFARLAND, Commissioner.

TABLE No. 7—C.

Statement of the Amounts which have accrued to the following named States up to the thirtieth June, 1880, on account of the two, three, and five per cent, upon the net proceeds of the cash sales of the Public Lands within their respective limits.

STATES.	Two Per Cent.	Three Per Cent.	Five Per Cent.	Aggregate.
Alabama.....	\$401,782 23	\$602,583 34		\$1,004,365 57
Arkansas.....			\$227,359 05	227,359 05
Colorado.....			9,589 73	9,589 73
Florida.....			28,975 44	28,975 44
Iowa.....			626,075 16	626,075 16
Illinois.....		712,744 82		712,744 82
Indiana.....		618,277 50		618,277 50
Kansas.....			258,842 11	258,842 11
Louisiana.....			315,612 89	315,612 89
Mississippi.....	395,142 08	592,690 20		987,832 28
Missouri.....	15,587 78	535,836 05		551,423 83
Michigan.....			471,344 55	471,344 55
Minnesota.....			99,409 47	99,409 47
Nevada.....			8,319 84	8,319 84
Nebraska.....			116,578 67	116,578 67
Oregon.....			34,911 09	34,911 09
Ohio.....		596,634 10		596,634 10
Wisconsin.....			455,253 73	455,253 73
Totals.....	\$812,512 09	\$3,658,766 01	\$2,652,271 73	\$7,123,549 83

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, }  
WASHINGTON, D. C., April 14, 1882. }

I hereby certify that I have caused the foregoing table to be examined and compared with the records of this office, and find it to be correct.

N. C. McFARLAND, Commissioner.

### EXHIBIT No. 26.

#### CALIFORNIA LAND SALES.

The bill (S. 994) granting to the State of California five per cent of the net proceeds of the sales of lands in said State was announced as next in order.

Mr. Allison. I object to that.

The President *pro tempore*. Objection being made, the bill goes over under the rule.

Mr. Dolph. I believe the Senator from California (Mr. Stanford) desires it to keep its place on the calendar without prejudice.

The President *pro tempore*. Does the Senator from Iowa object to its retaining its place on the calendar?

Mr. Allison. I do not.

The President *pro tempore*. The bill will retain its place on the calendar. [Congressional Record of May 18, 1886, page 4769.]

### EXHIBIT No. 27.

#### CALIFORNIA LAND SALES.

The bill (S. 994) granting to the State of California five per cent of the net proceeds of the sales of lands in said State, was announced as next in order.

Mr. Plumb. I think that had better go over.

Mr. Dolph. I ask that it retain its place on the calendar.

The Presiding Officer. If there be no objection, the bill will be passed over, retaining its place on the calendar.

[Congressional Record of June 8, 1886, page 5582.]

### EXHIBIT No. 28.

#### CALIFORNIA LAND SALES.

The bill (S. 994) granting to the State of California five per cent of the net proceeds of the sales of lands in said State, was announced as next in order.

Mr. Allison. I object.

The President *pro tempore*. Objection being made, the bill goes over. [Congressional Record of June 19, 1886, page 6155.]

### EXHIBIT No. 29.

#### CALIFORNIA LAND SALES.

The bill (S. 994), granting to the State of California five per cent of the net proceeds of the sales of lands in said State, was announced as next in order.

Mr. Miller. Let that go over.

The President *pro tempore*. The bill will be passed over. [Congressional Record of July 9, 1886, page 7028.]

### EXHIBIT No. 30.

Forty-ninth Congress, first session. H. R. 9478.

In the Senate of the United States. July 12, 1886—Referred to the Committee on Appropriations and ordered to be printed.

#### AMENDMENT

Intended to be proposed by Mr. Mitchell, of Oregon, to the bill (H. R. 9478) making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-seven, and for other purposes, viz.: Insert the following:

And the First Comptroller of the Treasury is hereby authorized and directed to have reported to him by the Commissioner of the General Land

Office, who is hereby authorized and directed to report the same, the amounts of the five per centum of the net proceeds of the cash sales of the public lands made by the United States in any of the public land States since the admission of such States; and the sum of money necessary to pay such States said five per centum is hereby appropriated; and when the accounts for the same shall have been duly audited by the proper accounting officers, the Secretary of the Treasury is hereby authorized and directed to pay the same in all cases where the same have not been heretofore paid.

**EXHIBIT No. 31.**

FISCAL YEARS.	Net Proceeds.	Five per centum of Net Proceeds.	Interest on said per centum for one year at 7 per cent.	No. of Years.	Interest at 7 per cent for the number of Years.
1858 ----- }	\$82,118 51	\$4,105 93	\$287 41	27	\$7,760 07
1859 ----- }					
1860 ----- }	4,283 41	214 17	14 99	26	389 74
1861 ----- }	62,430 51	3,121 53	218 51	25	5,462 75
1862 ----- }					
1863 ----- }	31,313 93	1,565 70	109 60	22	2,411 20
1864 ----- }					
1865 ----- }	101,239 02	5,061 95	354 34	21	7,441 14
1866 ----- }	90,151 16	4,507 56	315 53	20	6,310 60
1867 ----- }	339,945 42	16,997 27	1,189 81	19	22,606 39
1868 ----- }	578,412 60	28,920 63	2,024 44	18	36,439 92
1869 ----- }	2,166,280 85	108,314 04	7,581 98	17	128,893 66
1870 ----- }	583,578 78	29,178 94	2,042 52	16	32,680 32
1871 ----- }	347,060 21	17,353 01	1,214 71	15	18,220 65
1872 ----- }	424,366 71	21,218 34	1,485 28	14	20,793 92
1873 ----- }	447,722 93	22,386 15	1,567 03	13	20,371 39
1874 ----- }	460,576 33	23,028 82	1,612 02	12	19,344 24
1875 ----- }	606,897 66	30,344 88	2,124 14	11	23,365 54
1876 ----- }	484,994 54	24,249 73	1,697 49	10	16,974 90
1877 ----- }	435,637 27	21,781 86	1,524 73	9	13,722 57
1878 ----- }	349,684 47	17,484 22	1,223 90	8	9,791 20
1879 ----- }	171,094 08	8,554 70	598 83	7	4,191 81
1880 ----- }	140,066 84	7,003 34	490 23	6	2,941 38
1881 ----- }	255,754 61	12,787 73	895 14	5	4,475 70
1882 ----- }	284,316 88	14,215 84	995 11	4	3,980 44
1883 ----- }	720,763 41	36,038 17	2,522 67	3	7,568 01
1884 ----- }	814,782 63	40,739 13	2,851 74	2	5,703 48
1885 ----- }	625,634 33	31,281 71	2,189 72	1	2,189 72
Totals ----- }	\$10,609,107 09	\$530,455 35	\$37,131 87	-----	\$424,030 74

**EXHIBITS**

TO

**DIRECT TAX CLAIM.**



**EXHIBIT No. 1.**

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT, }  
SACRAMENTO, December 12, 1882. }

JOHN MULLAN, *Esq.*, Washington, D. C.:

SIR: It having come to my knowledge that measures are being taken by several of the States, through their duly appointed agents, to recover from the National Government certain moneys paid by such States under an Act of Congress, approved August 5, 1861, entitled "An Act to provide increased revenue from imports to pay interest on the public debt, and for other purposes," and as the State of California has paid the sum of two hundred and fifty-four thousand five hundred and thirty-eight (\$254,538) dollars under the provisions of said Act, it being the total amount assessed against the State, I, therefore, following the action of our sister States, do appoint you as the agent of the State of California to act in her behalf in taking such steps as may be necessary to recover from the United States Government the sums of money so paid under said Act. Your compensation for services rendered thereunder to be left to the discretion of the State Legislature.

GEORGE C. PERKINS,  
Governor of California.

**EXHIBIT No. 2.**

Forty-eighth Congress, first session. H. R. 108. Printer's No., 108.

In the House of Representatives. December 10, 1883—Read twice, referred to the Committee on War Claims, and ordered to be printed.

Mr. Henley introduced the following bill:

**A BILL**

*For the relief of the State of California.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be and he is hereby authorized and directed to pay to the State of California the sum of thirty-eight thousand one hundred and eighty dollars and seventy-nine cents; the same being fifteen per centum of two hundred and fifty-four thousand five hundred and thirty-eight dollars and sixty-six cents, her quota of the direct tax assessed under the Act of August fifth, eighteen hundred and sixty-one, and by her paid without any expense whatsoever to the United States, and which percentum has not heretofore been paid or allowed the State of California.*

Forty-eighth Congress, first session. S. 810.

In the Senate of the United States. December 19, 1883—Mr. Miller of California asked, and by unanimous consent obtained, leave to bring in the following bill; which was read twice, and referred to the Committee on Finance.

### A BILL

*For the relief of the State of California.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be and he is hereby authorized and directed to pay to the State of California the sum of thirty-eight thousand one hundred and eighty dollars and seventy-nine cents; the same being fifteen per centum of two hundred and fifty-four thousand five hundred and thirty-eight dollars and sixty-six cents, her quota of the direct tax assessed under the Act of August fifth, eighteen hundred and sixty-one, and by her paid without any expense whatsoever to the United States, and which percentum has not heretofore been paid or allowed the State of California.*

### EXHIBIT No. 3.

Forty-eighth Congress, first session. H. R. 953. Printer's No., 983.

In the House of Representatives. December 11, 1883—Read twice, referred to the Committee on War Claims, and ordered to be printed.

Mr. Cassidy introduced the following bill:

### A BILL

*To authorize the payment of certain money to the State of Nevada.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be and he is hereby authorized and directed to pay to the State of Nevada the sum of six hundred and eighty-eight dollars and eighty-four cents, the same being fifteen per centum of four thousand five hundred and ninety-two dollars and sixty-six cents, her quota, when a Territory, of the direct tax assessed under the Act of August fifth, eighteen hundred and sixty-one, and by her paid without any expense whatsoever to the United States, and which percentum has not heretofore been paid or allowed the State of Nevada.*

Forty-eighth Congress, first session. S. 655.

In the Senate of the United States. December 13, 1883—Mr. Jones of Nevada asked, and by unanimous consent obtained, leave to bring in the following bill; which was read twice, and referred to the Committee on Claims:

### A BILL

*For the relief of the State of Nevada.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury*

be and he is hereby authorized and directed to pay to the State of Nevada the sum of six hundred and eighty-eight dollars and eighty-nine cents, the same being fifteen per centum of four thousand five hundred and ninety-two dollars and sixty-six cents, her quota, when a Territory, of the direct tax assessed under the Act of August fifth, eighteen hundred and sixty-one, and by her paid without any expense whatsoever to the United States, and which percentum has not heretofore been paid or allowed the State of Nevada.

### EXHIBIT No. 4.

Forty-eighth Congress, first session. S. 511.

In the Senate of the United States. December 10, 1883—Mr. Slater asked, and by unanimous consent obtained, leave to bring in the following bill, which was read twice and referred to the Committee on Claims:

### A BILL

*For the relief of the State of Oregon.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be and he is hereby authorized and directed to pay to the State of Oregon the sum of five thousand two hundred and seventy-one dollars and nine cents, the same being fifteen per centum of thirty-five thousand one hundred and forty dollars and sixty-six cents, her quota of the direct tax assessed under the Act of August 5, 1861, and by her paid without any expense whatsoever to the United States, and which percentum has not heretofore been paid or allowed the State of Oregon.*

Forty-eighth Congress, first session. H. R. 1310. Printer's No., 1360.

In the House of Representatives. December 11, 1883—Read twice, referred to the Committee on War Claims, and ordered to be printed.

Mr. George introduced the following bill:

### A BILL

*For the relief of the State of Oregon.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be and he is hereby authorized and directed to pay to the State of Oregon the sum of five thousand two hundred and seventy-one dollars and nine cents, the same being fifteen per centum of thirty-five thousand one hundred and forty dollars and sixty-six cents, her quota of the direct tax assessed under the Act of August 5, 1861, and by her paid without any expense whatsoever to the United States, and which percentum has not heretofore been paid or allowed the State of Oregon.*

**EXHIBIT No. 5.**

Forty-eighth Congress, first session.

*Senate Bill No. 511, Senate Bill No. 655, Senate Bill No. 810.*

Senate Bill No. 511, introduced in the Senate by Hon. James H. Slater of Oregon, December 10, 1883, and Senate Bill No. 655, introduced by Hon. J. P. Jones of Nevada, December 13, 1883, and Senate Bill No. 810, introduced by Hon. John F. Miller of California, December 19, 1883, have each and all but one object, to wit:

To allow to each of said States fifteen per centum of the amounts by them respectively paid into the U. S. Treasury as their proportion of the direct tax levied upon and apportioned to each of said States under the Direct Tax Act of fifth August, 1861 (U. S. Stats., vol. 12, page 294), and paid by said States respectively without any expense whatsoever to the Government of the United States or any of its officers.

Under Section 8 of said Direct Tax Act of August 5, 1861, there was apportioned:

To the State of California, the sum of .....	\$254,538 66
To the State of Oregon, the sum of .....	35,140 66
To the State of Nevada, the sum of .....	4,592 66

Under Section 9 of said Act the appointment of assessors and collectors was provided for in each and every State and Territory, and the subdivision of said States and Territories into collection districts for the purpose of assessing and collecting said tax, said appointments to be made after February, 1862.

Section 11 of said Act provided for the subdividing each collection district into subdistricts, with the authority to appoint assistant assessors therein, etc.

Section 13 of said Act provided that the assessments and collection should be made upon the assessed value of the properties in each district as ascertained in April, 1862, etc.

Section 22 of said Act provided for advertising assessment list, valuations, and enumerations in each and every district, and that the officers should visit each and every county seat in each of such districts, etc.

Section 24 of said Act provided for the creation of a Board of Assessors in each State, etc.

Section 25 of said Act provided for the appointment of clerks to such Boards, etc.

Section 30 of said Act provided for the pay of such assessors and assistant assessors, etc.

Section 34 of said Act provided that the collector should appoint as many deputies as he might think proper, etc.

Section 35 of said Act provided for other expenditures of money for advertising, etc., and for distraining upon the property of the people in each of said districts, etc.

Sections 36 and 38 of said Act provided for more expenditures of money, etc.

Section 39 of said Act provided for fees to clerks, etc.

Section 40 of said Act provided for a period of fifteen months, beginning with the annual day (April 1, 1862), with respect to the taxes contained in the lists transmitted to the Secretary of the Treasury.

Section 48 of said Act provided for salaries of said collectors and assistants, reaching a maximum of \$6,000, with contingent and other expenses, etc.

Now it was estimated, in view of all the premises and necessities of the situation, that the costs to the United States in each State and Territory for compensation to collectors and assistant collectors, assessors and assistant assessors, per diem clerks and assistant clerks, percentages prescribed and allowed to assessors and assistant assessors, and to collectors, with other and necessary and contingent expenses, advertising, traveling expenses, rents, postage, and the usual *et ceteras* always to be found in the return of those who disburse public moneys, would aggregate a sum of from ten to fifteen per centum of the total tax authorized to be collected.

In view thereof, Congress provided, in the fifty-third section of said Act, that any State, Territory, or district may assume and pay its quota, in its own way, by and through its own officers; and that if any State, Territory, or the District of Columbia shall give notice, by the Governor or other proper officer thereof, to the Secretary of the Treasury of the United States, on or before the second Tuesday of February next thereafter, of its intention to assume and pay, or to assess, collect, and pay into the Treasury of the United States the direct tax imposed by this Act, said State, Territory, or district shall be entitled to a deduction of fifteen per centum on such portion of its quota as shall have been actually paid into the Treasury of the United States on or before the last day of June in the year to which such payment relates, and of ten per centum on such part or parts of its quota as shall have been actually paid into the Treasury of the United States on or before the last day of September in the year to which such payment relates. The same section also provides that the amounts apportioned to any State, Territory, or the District of Columbia may be paid in whole or in part by the release of such State, Territory, or District to the United States of any "liquidated and determined claim of such State, Territory, or District of equal amount against the United States," and that in such release the same abatement shall be allowed as would be allowed in case of payment of the direct tax in money.

A subsequent Act, approved May 13, 1862, extends the provisions of Section 53, above referred to, to war claims which may be presented on or before the thirtieth of July, 1862.

Now all three of these States have heretofore paid into the public Treasury of the United States, in whole or in part, the several amounts assessed to them respectively, and without any expense whatsoever to the United States, and the same principles of equity as extended to other States should be now extended to California, Oregon, and Nevada, even though they did not come strictly up to the directory requirement as to the exact date of payment.

All three, however, strictly conformed to the underlying principle in said Section 53, by saving to the United States all costs of assessment and collection in the premises, by defraying all such costs and expenses themselves, and thereby have a good claim in equity for the amount of the fifteen per centum deduction provided for in said Section 53.

*First*—California paid into the United States Treasury:

On October 8, 1862 .....	\$63,839 31
On February 26, 1863 .....	183,606 10
On January 30, 1883 .....	495 72
Aggregating .....	\$247,941 13

Now fifteen per centum of \$247,941 13 is \$37,191 16, and which sum is now equitably due the State of California under the terms of said Senate Bill No. 810, which should be amended so as to read \$37,191 16, instead of \$38,180 79, as stated in said bill.

*Second*—The Territory of Nevada, on January 18, 1864, paid into the U. S. Treasury the sum of \$4,592 33, and without any expense whatsoever to the United States; the fifteen per centum of which sum is \$688 84, and which sum is now equitably due under Senate Bill No. 655, to the State of Nevada, as successor to the Territory of Nevada.

*Third*—The State of Oregon assumed said debt in 1864, and paid into the United States Treasury, without any expense whatsoever to the United States, as follows, to wit:

On December 13, 1881 .....	\$1,891 60
On March 31, 1883 .....	33,249 07
Aggregating .....	\$35,140 67

The fifteen per centum of which is \$5,271 09, and which sum is now equitably due under Senate Bill No. 511, to the State of Oregon.

It is therefore suggested that a substitute of one bill for these three bills may be reported by the honorable committee having the same in charge, and of the tenor, as follows, to wit:

#### A BILL

*For the relief of the States of California, Oregon, and Nevada.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the Secretary of the Treasury be and he is hereby authorized and directed to pay to the State of California, the sum of thirty-seven thousand one hundred and ninety-one dollars and sixteen cents; and to the State of Nevada, the sum of six hundred and eighty-eight dollars and eighty-four cents; and to the State of Oregon, the sum of five thousand two hundred and seventy-one dollars and nine cents; the same being fifteen per centum of the amounts of direct tax paid into the Treasury of the United States by said States respectively, under the Direct Tax Act of August 5, 1861, without any expense or costs whatsoever incurred therein by the United States, and which percentum has not heretofore been paid or allowed to said States, or to any of them.

Very respectfully,

JOHN MULLAN,

State Agent and Counsel for the States of California, Oregon, and Nevada.

#### EXHIBIT No. 6.

Forty-eighth Congress, first session. House Bills Nos. 108, 953, 1310.

*House Bill No. 108, introduced December 10, 1883, by Hon. Barclay Henry, of California; House Bill No. 953, introduced December 11, 1883, by Hon. George W. Cassidy, of Nevada; House Bill No. 1310, introduced December 11, 1883, by Hon. M. C. George, of Oregon;*

Have for their object, respectively:

To allow to each of said States fifteen per centum of the amounts by them respectively paid into the United States Treasury as their proportion

of the direct tax levied upon and apportioned to each of said States under the Direct Tax Act of the fifth of August, 1861 (U. S. Stats., vol. 12, p. 292), and paid by said States, respectively, without any expense whatsoever to the Government of the United States or any of its officers.

Under Section 8 of said Direct Tax Act of August 5, 1861, there was apportioned:

To the State of California, the sum of .....	\$254,538 67
To the State of Oregon .....	35,140 67
To the Territory of Nevada .....	4,592 67

[See letters of the honorable Secretary of the Treasury of February 11, 1884, and of the First Comptroller, of February 9, 1884, herewith attached, marked "A" and "B," and made a part hereof.]

Under Section 9 of said Act, the appointment of assessors and collectors was provided for in each and every State and Territory, and the subdivision of said States and Territories into collection districts for the purpose of assessing and collecting said tax, said appointments to be made after February, 1862.

Section 11 of said Act provided for the subdividing each collection district into sub-districts, with authority to appoint assistant assessors therein, etc.

Section 13 of said Act provided that the assessments and collection should be made upon the assessed value of the properties in each district, as ascertained in April, 1862, etc.

Section 22 of said Act provided for advertising assessment list, valuations, and enumerations in each and every district, and that the officers should visit each and every county seat in each of such districts, etc.

Section 24 of said Act provided for the creation of a Board of Assessors in each State, etc.

Section 25 of said Act provided for the appointment of clerks to such Boards, etc.

Section 30 of said Act provided for the pay of such assessors and assistant assessors.

Section 34 of said Act provided that the collector should appoint as many deputies as he might think proper, etc.

Section 35 of said Act provided for other expenditures of money for advertising, etc., and for distraining upon the property of the people in each of said districts, etc.

Sections 36 and 38 of said Act provided for more expenditures of money, etc.

Section 39 of said Act provided for fees to clerks, etc.

Section 40 of said Act provided for a period of fifteen months, beginning with the annual day (April 1, 1862), with respect to the taxes contained in the lists transmitted to the Secretary of the Treasury.

Section 48 of said Act provided for the salaries of said collectors and assistants, reaching a maximum of \$6,000, with contingent and other expenses, etc.

In other words, this Direct Tax Act of August 5, 1861, and the fifty-eight sections comprising it, provided for an immense and expensive *Federal machinery* to be organized and to be set in motion in every State and Territory of the United States, for the assessment of the property, and collection of the twenty million dollars direct tax, provided for in Section 8 of said Act.

Now it was estimated, in view of all the premises and necessities of the

situation, that the costs to the United States in each State and Territory, for compensation to collectors and assistant collectors, assessors and assistant assessors, per diem clerks and assistant clerks, percentages prescribed and allowed to assessors and assistant assessors, and to collectors, with other and necessary and contingent expenses, advertising, traveling expenses, rents, postage, and the usual *et ceteras* always to be found in the return of those who disburse public moneys, would aggregate a sum of from ten to fifteen per centum of the total tax authorized to be collected.

In view thereof Congress provided, in the fifty-third section of said Act, that any State, Territory, or District, may assume and pay its quota in its own way, by and through its own officers; and that if any State, Territory, or District of Columbia, shall give notice, by the Governor or other proper officer thereof, to the Secretary of the Treasury of the United States, on or before the second Tuesday of February next thereafter, of its intention to assume and pay, or to assess, collect, and pay into the Treasury of the United States the direct tax imposed by this Act, said State, Territory, or District shall be entitled to a deduction of fifteen per centum on such portion of its quota as shall have been actually paid into the Treasury of the United States on or before the last day of June in the year to which such payment relates; and of ten per centum on such part or parts of its quota as shall have been actually paid into the Treasury of the United States, on or before the last day of September in the year to which such payment relates.

The same section provides also that the amounts apportioned to any State, Territory, or the District of Columbia, may be paid in whole or in part by the release of such State, Territory, or District, to the United States of any "liquidated and determined claim of such State, Territory, or District, of equal amount against the United States," and that in such release the same abatement shall be allowed as would be allowed in case of payment of the district tax in money.

A subsequent Act, approved May 13, 1862, extends the provisions of Section 53 above referred to, to war claims which may be presented on or before the thirtieth of July, 1862.

Now all these three States have heretofore paid into the public Treasury of the United States, in whole or in part, the several amounts assessed to them respectively and without any expense whatsoever to the United States, and the same principles of equity as extended to other States should be now extended to California, Oregon, and Nevada, even though they did not come strictly up to the directory requirements as to the exact date of payment.

All these, however, strictly conformed to the underlying principle in said Section 53, by saving to the United States all costs of assessment and collection in the premises, by defraying all such costs and expenses themselves, and thereby have a good claim in equity for this amount of the fifteen per centum deduction provided for in said Section 53.

*First*—California paid into the United States Treasury:

On October 2, 1862.....	\$63,839 31
On February 26, 1863.....	183,606 10
On January 30, 1883.....	495 72
Aggregating.....	\$247,941 13

Now fifteen per centum of \$247,941 13 is \$37,191 16, and which sum is now equitably due the State of California under the terms of said House Bill No. 6772.

*Second*—The Territory of Nevada, on January 18, 1864, paid into the United States Treasury the sum of \$4,592 33, and without any expense whatever to the United States, the fifteen per centum of which sum is \$688 34, and which sum is now equitably due, under the terms of said House Bill No. 6772, to the State of Nevada, as successor to the Territory of Nevada.

*Third*—The State of Oregon assumed said debt October 20, 1862, and paid into the United States Treasury, without any expense whatever to the United States, as follows, to wit:

On December 13, 1881.....	\$1,891 60
On March 31, 1883.....	33,249 07
Aggregating.....	\$35,140 67

The fifteen per centum of which is \$5,271 09, and which sum is now equitably due, under the terms of House Bill No. 6772, to the State of Oregon.

A similar measure, identical even in language, was passed by Congress in August, 1882, for the State of Kansas, and attached to the Deficiency Bill (see U. S. Stats., vol. 22, p. 261), and which measure was recommended by the Treasury Department in a letter of March 28, 1862, from the First Comptroller to the honorable Secretary of the Treasury, copy of which is hereto annexed, marked "C," and made a part hereof, and in which letter said Department called attention to the fact of the equity and justice in all cases like that of Kansas.

The cases of California, Oregon, and Nevada are quite identical with that of Kansas, differing only in this: that the equity in the cases of California, Oregon, and Nevada is even greater than it was in the State of Kansas.

Very respectfully,

JOHN MULLAN,  
State Agent and Counsel for California, Oregon, and Nevada.

"A."

TREASURY DEPARTMENT, FIRST COMPTROLLER'S OFFICE, }  
WASHINGTON, D. C., February 9, 1884. }

Hon. CHARES J. FOLGER, *Secretary of the Treasury*:

SIR: By reference and request of your office, I have the honor to return herewith the letter of the Hon. Barclay Henley, of the thirtieth ultimo, in relation to the direct tax account with California, Nevada, and Oregon, respectively, under the Act of August 5, 1861, to wit:

The quota of California under said Act was.....	\$254,538 67
The deposits on account thereof, per covering warrants:	
No. 5, of December 31, 1862.....	\$63,838 31
No. 2, of March 31, 1863.....	183,606 10
No. 2566, of June 30, 1883.....	495 72
	247,941 13
Leaving a balance due the United States of.....	\$6,597 54
The quota of Nevada under the said Act was.....	\$4,592 67
The deposit on account thereof, per covering warrant No. 26, of March 31, 1864, was.....	\$4,592 33
Warrant No. 1834, of December 31, 1881.....	34
	\$4,592 67

The quota of Oregon under said Act was.....	\$35,140 67
The deposit on account thereof, per covering warrant No. 1835, of December 31, 1881, was .....	\$1,891 60
Warrant No. 2696, of March 31, 1883 .....	33,249 07
	<u>\$35,140 67</u>

Said accounts with Nevada and Oregon now stand balanced and closed. No deduction of percentage has been allowed to any of these three States in the adjustment of said accounts, and I am not aware of any expense incurred by the United States in collecting the several sums deposited to the credit thereof as aforesaid.

Very respectfully,

[Signed:] WM. LAWRENCE, Comptroller.  
By J. TARBELL, Deputy Comptroller.

"B."

TREASURY DEPARTMENT, February 11, 1884.

Hon. BARCLAY HENLEY, *House of Representatives*:

SIR: In response to your letter of the thirtieth ultimo, relative to payment of direct tax under the Act of August 5, 1861, by the States of California, Oregon, and Nevada, and asking whether any expenses were incurred therein or any per cent allowed therefor, by the United States, I have the honor to inclose herewith an official report from the office of the First Comptroller of the Treasury covering the points of your inquiry.

Very respectfully,

[Signed:] CHARLES J. FOLGER, Secretary.

"C."

TREASURY DEPARTMENT, FIRST COMPTROLLER'S OFFICE, }  
WASHINGTON, D. C., March 28, 1882. }

Hon. CHARLES J. FOLGER, *Secretary of the Treasury*:

SIR: By your reference to this office of the twenty-third instant, I have the honor to acknowledge the receipt of a letter addressed to you under date of the twenty-first instant, by Robert J. Stevens, Clerk of the Committee on Appropriations of the House of Representatives, in which he states that by direction of the committee he incloses to you a paper submitted to them, being the form of a clause proposed to be embraced in the Sundry Civil Bill, to enable the Secretary of the Treasury to pay to the State of Kansas fifteen per centum of the amount of her quota of the direct tax provided for by the Act of August 5, 1861, as an equitable settlement of the cost for assuming the collection of the same.

He further states that the committee requests that you will have the application examined and returned to the committee, with full information and your recommendation thereupon.

Your reference to this office is for report.

All the facts necessary to a complete understanding of this subject will be found in the appendix to my annual report.

The material facts may be thus stated:

The Act of Congress of August 5, 1861 (12 Stats., 292,) imposed a direct tax of \$20,000,000 upon the United States, and apportioned the same to the States, respectively, including \$71,743 33 to the State of Kansas.

The fifty-third section of the Act provides that any State may lawfully assume, assess, collect, and pay into the Treasury of the United States, the direct tax, or its quota thereof, in its own way and manner.

And it is provided (12 Stats. 311), that any State which shall give notice, by the Governor, to the Secretary of the Treasury, on or before the second Tuesday in February, 1862, and in each succeeding year thereafter, of its intention to assume and pay into the Treasury of the United States, the direct tax imposed by this Act, shall be entitled to a deduction of fifteen per cent on the quota of direct tax apportioned to such State, levied and collected by such State, through its officers; provided, that the deduction shall only be made to apply to such part of the sum as shall have been actually paid into the Treasury of the United States on or before the last day of June in the year to which such payment relates, and the Act for collecting the tax, through officers of the United States, in case the same should not be paid by any State.

Under this Act, on the twenty-ninth of May, 1868, the then First Comptroller audited and certified that \$71,743 33 are due and payable from the State of Kansas to the United States.

The State was accordingly charged in the Register's office with this sum.

In pursuance of the Act of July 27, 1861, to indemnify the States for expenses incurred by them in defense of the United States (12 Stats. 276), the State of Kansas filed claim in the Treasury Department in April, 1862, on which there was allowed, September 20, 1867, \$9,360 82, which was placed to the credit of the State on account of the direct tax charged to it as aforesaid.

On the twenty-second of June, 1881, \$26,604 05 were credited to the State of Kansas for expenses incurred by that State under the Act of July 27, 1861.

The Deficiency Appropriation Act of March 3, 1881, appropriated for the State of Kansas, for amount due of the five, three, and two per cent funds to States, from the proceeds of sales of lands, \$190,268 27.

Of this sum there was credited to the State of Kansas, on the charge against it for direct taxes, about June 23, 1881, \$35,778 46, and the residue of the sum appropriated by the Act of March 3, 1881, was paid to the State of Kansas.

The direct tax, thus charged to the State of Kansas, was paid by the three sums named, to wit, \$9,360 82, \$26,604 05, for expenses incurred by the State in the defense of the United States under the Act of July 27, 1861, and \$35,778 46 out of the sum appropriated by the Act of March 3, 1881.

The purpose of the clause proposed to be embraced in the Sundry Civil Bill is to allow to the State of Kansas fifteen per cent on these three sums, making \$10,761 49.9, or, as stated in the bill, \$10,761 50.

From this it will be seen that as the law now stands the State of Kansas has no legal claim to this payment.

The only question, I suppose, therefore to be determined, is whether the State has a claim founded upon principles of substantial equity and justice which ought to be allowed by Congress.

I learned informally that you desire an expression of my opinion upon this question. In favor of the payment of this sum to the State of Kansas, it may, with great propriety and force be argued that the United States has not been put to the expense of collecting the tax from the citizens or property in the State of Kansas, and that the amount has been paid without this expense to the United States, and that therefore the State should be reimbursed to this extent.



On the other hand it may be urged that other States paid years since, whereas the State of Kansas has delayed its payment.

It may properly be said, however, I think, that if the General Government chose to omit collecting the tax from the citizens or property in the State of Kansas it is no fault of that State, or its citizens, and that no complaint can properly be made on that score by the General Government.

It is to be presumed that if the United States had taken the necessary steps at an earlier date to collect this tax, it would have been collected, and if the officers of the General Government did not deem it expedient to press an earlier payment, the State should not be charged with any failure or delinquency on that account.

It seems to me, therefore, that this claim by the State of Kansas for reimbursement to the extent of \$10,761 50 is supported by strong considerations of equity and justice.

It is proper to say that if Congress should make this appropriation, a similar appropriation will doubtless be asked in behalf of other States.

On the twenty-fifth instant I requested the Register of the Treasury to give me information as to the sums which had been covered into the Treasury on account of the direct tax, to the credit of the several States, where the tax of fifteen per cent was not allowed under the Act of August 5, 1861, and, under date of the twenty-seventh, I received from him a letter on this subject, which is herein inclosed.

This shows that the several States and Territories have been credited to the amount of \$5,463,588 57, without an allowance of fifteen per cent. I learn, informally, that the records in the Register's office do not now show how much of this gross sum arises from expenses incurred by the States in defense of the United States, under the Act of Congress of July 27, 1861 (12 Stats., 276), nor how much of it comes from other sources.

It seems to me proper, however, that attention should be called to the fact that claim will doubtless be made by other States, if this appropriation should be made in favor of the State of Kansas.

I have the honor to inclose herewith the letter of Mr. Stevens, with its inclosure, and the letter to me by the Assistant Register, of the twenty-seventh instant. Also my annual report, the appendix to which gives more at large the facts necessary to a proper understanding of this subject.

Very respectfully,

[Signed:]

WM. LAWRENCE, Comptroller.

### EXHIBIT No. 7.

Forty-eighth Congress, first session.

In the Senate of the United States. May 9, 1884—Mr. Farley introduced the following bill, which was read twice and referred to the Committee on Claims:

#### A BILL

*For the relief of the State of California.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That to enable the Secretary of the Treasury to pay to the State of California fifteen per centum of the amount of her quota of the direct tax of eighteen hundred and sixty-one,*

for assuming the cost of the collection of the same, and as paid by her without any expense to the United States, the sum of thirty-seven thousand one hundred and ninety-one dollars and seventeen cents is hereby appropriated out of any money in the Treasury not otherwise appropriated.

### EXHIBIT No. 7¼.

Forty-eighth Congress, first session. Senate. Report No. 550.

In the Senate of the United States. May 14, 1884—Ordered to be printed. Mr. Dolph, from the Committee on Claims, submitted the following

#### REPORT.

[To accompany bills S. 511, 655, and 2191.]

Your committee, to which were referred the bills S. 511, for the relief of the State of Oregon; S. 655, for the relief of the State of Nevada; and S. 2191, for the relief of the State of California, respectfully reports:

That it is proposed by said bills to authorize and direct the Secretary of the Treasury to pay to the States of California, Oregon, and Nevada the following amounts, namely: Oregon, \$5,271 10; Nevada, \$688 90; California, \$37,191 11; being fifteen per cent of the amounts apportioned to the said States, respectively, of the direct tax of \$20,000,000 imposed by Act of Congress of August 5, 1861, upon the United States.

That the amounts of said direct tax apportioned to said States of California, Oregon, and Nevada were as follows: California, \$247,941 13; Oregon, \$35,140 67; Nevada, \$4,592 67.

It was provided by the fifty-third section of said Act, that any State might lawfully assume, collect, assess, and pay into the Treasury of the United States the direct tax, or its quota thereof, in its own way and manner, and that any State which should give notice by its Governor to the Secretary of the Treasury on or before the second Tuesday of February, 1862, and in each succeeding year thereafter, of its intention to assume and pay into the Treasury of the United States the direct tax imposed by said Act, should be entitled to a deduction of fifteen per cent upon such portion of the tax as should be paid on or before the last day of June in the year to which such tax payment related.

The States of California and Oregon, and the Territory of Nevada, at the first session of their respective Legislative Assemblies after the imposition of said tax, assumed and made provision for the collection of the same.

The State of California, by the first section of an Act of the Legislative Assembly of that State, approved April 12, 1862, provided for an annual tax of fifteen cents upon each \$100 in value of all the property in the State liable to taxation, for the purpose of paying the quota of said direct tax apportioned to that State; and by the tenth section of said Act directed the Treasurer of the State to pay over to the Assistant Treasurer of the United States, at the City of San Francisco, on the first Monday in each month, all moneys in the State Treasury belonging to the Federal Tax Fund, not exceeding in each fiscal year the quota of the direct tax allotted to the State by Act of Congress after retaining therefrom the deduction allowed by the said Act of Congress to the State, in lieu of compensation, pay, per diem, and percentage. By the first section of an Act passed by the Legislative Assembly of the State of Oregon, approved October 20, 1862,

the sum of \$35,140 66 $\frac{2}{3}$  was appropriated for the payment to the United States of the amount of said direct tax apportioned to that State, and by Section 2 of said Act the State Treasurer was authorized, whenever the proper officer of the Treasury Department of the United States should draw upon the State therefor, to pay the sum of \$10,000, and to pay the further sum of \$25,140 66 $\frac{2}{3}$  upon like draft at any time after the first of March, 1863.

The Territory of Nevada, by an Act of the Legislative Assembly of said Territory, approved November 29, 1861, provided for the levying and collecting of a special tax of one mill on each dollar of the taxable property in the Territory for the purpose of paying the quota of said direct tax apportioned to said Territory, and by Section 3 of said Act made it the duty of the Territorial Treasurer, upon demand of the proper officer, to pay over to the Treasurer of the United States the amount due from the Territory under the said Act of Congress.

Your committee is not informed why the quota of said States and Territory was not collected in accordance with the provisions of said Acts. The full amount of said tax has been paid into the Treasury of the United States, and without cost to the United States, but the same was paid after the time specified in said Act of Congress, within which the payment would have entitled them to the deduction of fifteen per cent.

It is conceded that said States have no legal claim to the deduction asked for, but it is contended that as the United States has not been put to the expense of collecting said tax, said States should be reimbursed to the extent proposed by the bills under consideration. Congress has adopted this view of the question and has refunded to the State of Kansas fifteen per cent of the amount of such direct tax paid by her under similar circumstances. Such repayment was authorized by the following clause of the Deficiency Appropriation Bill of August 5, 1882:

To enable the Secretary of the Treasury to pay to the State of Kansas fifteen per cent of the amount of her quota of the direct tax of 1861 on account of proper costs for assuming the collection of the same, \$10,761 50.

Your committee submits herewith a letter from the honorable Secretary of the Treasury, together with the report of the First Comptroller of the Treasury of March 28, 1882, and the copy of the report of the Register of the Treasury, referred to therein, all relating to the payment to the State of Kansas of the fifteen per cent of her quota of said direct tax.

Your committee is of the opinion that the claims of the States of California, Oregon, and Nevada, for the repayment of fifteen per cent of the direct tax paid by them, are as meritorious as was the claim of the State of Kansas, and that the equitable principle of equality requires the like consideration of the claims of said States by Congress. Your committee therefore reports the accompanying amendment to the Deficiency Appropriation Bill as a substitute for said bills: Senate 511, Senate 655, and Senate 2191.

TREASURY DEPARTMENT, April 19, 1884.

SIR: Referring to your communication of the fifteenth instant, requesting information in relation to the payment to the State of Kansas of fifteen per cent of her quota of the direct tax of 1861, I have the honor to inclose herewith copy of the report of the First Comptroller of March 28, 1882, upon the subject, which was forwarded to the Chairman of the House Committee on Appropriations, March 31, 1882.

I would also invite your attention, in this connection, to the inclosed

copy of letter of the Register of the Treasury of the eighteenth instant, giving the aggregate amounts that have been covered into the Treasury on account of direct tax to the credit of the several States and Territories and the District of Columbia, where a deduction of fifteen per centum was not allowed under the Act of August 5, 1861.

Very respectfully,

CHARLES J. FOLGER, Secretary.

Hon. J. N. Dolph, United States Senate.

TREASURY DEPARTMENT, FIRST COMPTROLLER'S OFFICE, }  
WASHINGTON, D. C., March 28, 1882. }

SIR: By your reference to this office of the twenty-third instant, I have the honor to acknowledge the receipt of a letter addressed to you under date of the twenty-first instant by Robert J. Stevens, clerk of the Committee on Appropriations of the House of Representatives, in which he states that by direction of the committee he incloses to you a paper submitted to them, being the form of a clause proposed to be embraced in the Sundry Civil Bill—

To enable the Secretary of the Treasury to pay to the State of Kansas fifteen per centum of the amount of her quota of the direct tax provided for by the Act of August 5, 1861, as an equitable settlement of the cost for assuming the collection of the same.

He further states that the committee requests that you will have the application examined and returned to the committee, with full information and your recommendation thereupon. Your reference to this office is for report.

All of the facts necessary to a complete understanding of this subject will be found in the appendix to my annual report. The material facts may be thus stated: The Act of Congress of August 5, 1861 (12 Stats., 292), imposed a direct tax of \$20,000,000 upon the United States, and apportioned the same to the States respectively, including \$71,743 33 to the State of Kansas. The fifty-third section of the Act provides that any State may lawfully assume, assess, collect, and pay into the Treasury of the United States the direct tax, or its quota thereof, in its own way and manner. And it is provided (12 Stats., 311) that any State which shall give notice by the Governor to the Secretary of the Treasury, on or before the second Tuesday of February, 1862, and in each succeeding year thereafter, of its intention to assume and pay into the Treasury of the United States the direct tax imposed by this Act, shall be entitled to a deduction of fifteen per cent on the quota of direct tax apportioned to such State, levied and collected by such State through its officers, provided that the deduction shall only be made to apply to such part of the sum as shall have been actually paid into the Treasury of the United States on or before the last day of June in the year to which such payment relates; and the Act provided for collecting the tax through officers of the United States, in case the same should not be paid by any State. Under this Act, on the twenty-ninth of May, 1868, the then First Comptroller admitted and certified that \$71,743 33 are due and payable from the State of Kansas to the United States. The State was accordingly charged in the Register's office with this sum. In pursuance of the Act of July 27, 1861, to indemnify the States for expenses incurred by them in defense of the United States (12 Stats., 276), the State of Kansas filed claims in the Treasury Department in April, 1862, on which there was allowed September 20, 1867, \$9,360 82, which was placed to the credit of the State on account of the

direct tax charged to it as aforesaid. On the twenty-second of June, 1881, \$26,604 05 were credited to the State of Kansas for expenses incurred by that State under the Act of July 27, 1861. The Deficiency Appropriation Act of March 3, 1881, appropriated for the State of Kansas for amount due of the five, three, and two per cent funds to States from the proceeds of sales of lands, \$190,268 27. Of this sum there was credited to the State of Kansas, on the charge against it for direct taxes, about June 23, 1881, \$35,778 46, and the residue of the sum appropriated by the Act of March 3, 1881, was paid to the State of Kansas. The direct tax thus charged to the State of Kansas was paid by the three sums named, to wit, \$9,360 82 and \$26,604 05 for expenses incurred by the State in defense of the United States, under the Act of July 27, 1861, and \$35,778 46 out of the sum appropriated by the Act of March 3, 1881.

The purpose of the clause proposed to be embraced in the Sundry Civil Bill is to allow to the State of Kansas fifteen per cent on these three sums, making \$10,761 49<sup>1</sup>/<sub>10</sub>, or, as stated in the bill, \$10,761 50. From this it will be seen that as the law now stands the State of Kansas has no legal claim to this payment. The only question, I suppose, therefore to be determined is, whether the State has a claim founded upon principles of substantial equity and justice which ought to be allowed by Congress. I learned informally that you desired an expression of my opinion upon this question.

In favor of the payment of this sum to the State of Kansas, it may with great propriety and force be urged that the United States has not been put to the expense of collecting the tax from the citizens or property in the State of Kansas, and that the amount has been paid without this expense to the United States, and that, therefore, the State should be reimbursed to this extent. On the other hand, it may be urged that other States paid years since, whereas the State of Kansas has delayed its payment. It may properly be said, however, I think, that if the General Government chose to omit collecting the tax from the citizens or property in the State of Kansas, it is no fault of the State or its citizens, and that no complaints can properly be made on that score by the General Government. It is to be presumed that if the United States had taken the necessary steps at an earlier date to collect this tax, it would have been collected; and if the officers of the General Government did not deem it expedient to press an earlier payment, the State should not be charged with any failure or delinquency on that account.

It seems to me, therefore, that this claim by the State of Kansas for reimbursement to the extent of \$10,761 50 is supported by strong considerations of equity and justice. It is proper to say, that if Congress shall make this appropriation a similar appropriation will doubtless be asked in behalf of other States.

On the twenty-fifth instant I requested the Register of the Treasury to give me information as to the sums which had been covered into the Treasury on account of the direct tax to the credit of the several States where the tax of fifteen per cent was not allowed under the Act of August 5, 1861, and under date of the twenty-seventh I received from him a letter on the subject, which is herein inclosed. This shows that the several States and Territories have been credited to the amount of \$5,483,588 57, without an allowance of fifteen per cent. I learn, informally, that the records in the Register's office do not show how much of this gross sum arises from expenses incurred by the States in defense of the United States under the Act of Congress of July 27, 1861 (12 Stats., 276), nor how much of it comes from other sources. It seems to me proper, however, that attention should

be called to the fact that claims will doubtless be made by other States, if this appropriation should be made in favor of the State of Kansas.

I have the honor to inclose herewith the letter of Mr. Stevens with its inclosure and the letter addressed to me by the Assistant Register, of the twenty-seventh instant; also my annual report, the appendix to which gives more at large the facts necessary to a proper understanding of this subject.

Very respectfully,

WM. LAWRENCE, Comptroller.

Hon. Charles J. Folger, Secretary of the Treasury.

TREASURY DEPARTMENT, REGISTER'S OFFICE, }  
April 18, 1884. }

SIR: I have the honor to submit the following as the aggregate amounts that have been covered into the Treasury on account of direct tax to the credit of the several States and Territories and the District of Columbia, where a deduction of fifteen per centum was not allowed under Act of August 5, 1861 (12 Stat., Sec. 53), as appears from the books of this office:

Alabama.....	\$8,491 46
Arkansas.....	184,082 18
California.....	247,941 13
Colorado.....	1,516 89
Delaware*.....	70,332 83
District of Columbia.....	49,437 33
Florida.....	43,529 81
Georgia.....	71,407 75
Kansas.....	71,743 33
Louisiana.....	268,515 12
Mississippi.....	74,742 57
Nebraska.....	19,312 00
Nevada.....	4,592 67
New Mexico.....	62,648 00
North Carolina.....	386,194 45
Oregon.....	35,140 67
South Carolina.....	377,961 30
Tennessee.....	387,722 06
Texas.....	130,008 06
Virginia.....	515,569 72
Washington.....	4,268 16
Wisconsin.....	166,887 13
Total.....	\$3,182,044 62

Very respectfully, etc.,

W. P. TITCOMB, Acting Register.

Hon. Chas. J. Folger, Secretary of the Treasury.

\* Additional amount allowed State on compromise, \$4,350 50.

# EXHIBIT No. 7<sup>1</sup>/<sub>2</sub>.

Forty-eighth Congress, first session. H. R. 6772. Printer's No., 7800.

In the House of Representatives. April 28, 1884—Read twice, referred to the Committee on Claims, and ordered to be printed.

Mr. Glascock introduced the following bill:

## A BILL

*To authorize an allowance to the States of California, Oregon, and Nevada of fifteen per centum of the direct tax levied under the Act of August fifth, eighteen hundred and sixty-one.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That to enable the Secretary of the Treasury to pay to the States of California, Oregon, and Nevada, respectively, fifteen per centum of their respective quotas of the direct tax of August fifth, eighteen hundred and sixty-one, on account of their proper costs for assuming the collection of the same, there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sums following, to wit: The sum of thirty-seven thousand one hundred and ninety-one dollars and sixteen cents, to be paid to the State of California; the sum of five thousand two hundred and seventy-one dollars and ten cents, to be paid to the State of Oregon; and the sum of six hundred and eighty-eight dollars and ninety cents, to be paid to the State of Nevada.*

## EXHIBIT No. 8.

Forty-eighth Congress, first session. H. R. Report No. 550.

In the Senate of the United States. May 14, 1884—Referred to the Committee on Appropriations and ordered to be printed.

## AMENDMENT

Reported by Mr. Dolph, from the Committee on Claims, and intended to be proposed to the bill (H. R. —) to provide for deficiencies in the appropriations for the service of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-four, and for other purposes, viz.: Insert the following:

To enable the Secretary of the Treasury to pay to the States of California, Oregon, and Nevada, respectively, the fifteen per centum of the amount of their quota of the direct tax of eighteen hundred and sixty-one, on account of the proper costs for assuming the collection of the same, as follows, to wit: To the State of California, thirty-seven thousand one hundred and ninety-one dollars and seventeen cents; to the State of Oregon, five thousand two hundred and seventy-one dollars and ten cents; and to the State of Nevada, six hundred and eighty-eight dollars and ninety cents.

## EXHIBIT No. 9.

TREASURY DEPARTMENT, FIFTH AUDITOR'S OFFICE, }  
WASHINGTON, June 18, 1886. }

JOHN MULLAN, Esq., State Agent, etc., Washington, D. C.:

SIR: The inclosed copies of accounts with the State of California for direct tax have been sent to this office for transmittal by the Hon. Register

of the Treasury, to which officer your letter of the seventeenth instant should have been addressed.

ANTH. EICKHÖFF,  
Auditor.

Form 13. No. 43,395. Recorded July 23, 1884. M. J. L.

TREASURY DEPARTMENT, FIFTH AUDITOR'S OFFICE, }  
July 23, 1884. }

I hereby certify that I have examined and adjusted an account between the United States and the State of California on account of Direct Tax Act, August 5, 1861, for —, 188—, and find that said State is chargeable, viz.:

To balance due from said State, per Report No. 39,283.....	\$6,597 54
To warrants on the Treasury, viz.:	
To amount allowed under Act July 7, 1884.....	31,583 26
	<u>\$38,180 80</u>

I also find that said State is entitled to credit:

By amount of fifteen per cent of quota (\$254,538 67).....	\$38,180 80
	<u>\$38,180 80</u>

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

J. B. MANN,  
Acting Fifth Auditor.

To the First Comptroller of the Treasury.

\$31,583 26. COMPTROLLER'S OFFICE, August 22, 1884.

I admit and certify the above balance of thirty-one thousand five hundred eighty-three dollars and twenty-six cents is due and payable to the Governor of the State of California, at San Francisco, California, out of the appropriation to supply deficiencies for the fiscal year 1884, and for prior years of July 7, 1884; draft to the care of Capt. John Mullan, State Agent, present; the State to be charged.

WM. LAWRENCE,  
Comptroller.

By Z. M. LAWRENCE,  
Acting Deputy Comptroller, S. C. C.

To the Register of the Treasury.

TREASURY DEPARTMENT, REGISTER'S OFFICE, }  
June 18, 1886. }

A true copy.

ROS. A. FISH,  
Assistant Register, P.

**EXHIBIT No. 10.**

TREASURY DEPARTMENT, REGISTER'S OFFICE, }  
July 14, 1886.

JOHN MULLAN, *Esq., State Agent for California, etc.:*

SIR: Referring to yours of twenty-third ultimo, I transmit herewith a certified transcript of reports relating to direct tax between the State of California and the United States, under Act of August 5, 1861, as requested therein.

Very respectfully,

ROS. A. FISH,  
Assistant Register, A. H.

Office of the Register of the Treasury, Form A, Transcript Certificate.

TREASURY DEPARTMENT, REGISTER'S OFFICE, }  
WASHINGTON, D. C., July 12, 1886.

Pursuant to Section 886 of the Revised Statutes of the United States, I, W. S. Rosecrans, Register of the Treasury Department, do hereby certify that the annexed is a transcript from the books and proceedings of the Treasury Department, and true copies of the originals on file in the case of State of California on account of direct tax; Act August 5, 1861.

W. S. ROSECRANS,  
Register, A. H.

Be it remembered, that William S. Rosecrans, Esq., who certified the annexed transcript, is now, and was at the time of doing so, Register of the Treasury of the United States, and that full faith and credit are due to his official attestations.

In testimony whereof, I, Charles S. Fairchild, Acting Secretary of the Treasury of the United States, have hereunto subscribed my name, and caused to be affixed the seal of this department, at the City of Washington, this thirteenth day of July, in the year of our Lord 1886.

[SEAL.]

C. S. FAIRCHILD,  
Acting Secretary of the Treasury.

No. 55,633.

TREASURY DEPARTMENT, FIFTH AUDITOR'S OFFICE, }  
May 15, 1868.

I hereby certify, that I have examined and adjusted an account between the United States and the State of California, and find that the sum of two hundred and fifty-four thousand five hundred and thirty-eight two thirds dollars is due from said State to the United States, as follows, viz.:

For amount of direct tax, imposed and apportioned by the provisions of the eighth section of an Act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes, approved August 5, 1861.

Amount to be debited to the State of California on the books of the Register of the Treasury, as appears from statement and vouchers, herewith

transmitted for the decision of the Comptroller of the Treasury thereon, \$254,538 67.

C. M. WALKER,  
Auditor.

To the First Comptroller of the Treasury.

\$254,538 <sup>67</sup>/<sub>100</sub>.

TREASURY DEPARTMENT, COMPTROLLER'S OFFICE, }  
May 29, 1868.

I admit and certify that two hundred fifty-four thousand five hundred thirty-eight and <sup>67</sup>/<sub>100</sub> dollars are due and payable, as stated in the above report.

R. W. TAYLOR,  
Comptroller.

To the Register of the Treasury.

No. 10,813.

TREASURY DEPARTMENT, FIFTH AUDITOR'S OFFICE, }  
March 17, 1874.

I hereby certify that I have examined and adjusted an account between the United States and State of California, for direct tax imposed under Act approved August 5, 1861, for the month ending —, 187—, and find said State chargeable therein, as follows, viz.:

To amount due from said State, per Register's Certificate, Report  
No. 55,633 ..... \$254,538 67

I also find said State entitled to credit as follows:

By amount deposited to the credit of the United States, per covering *Warrant No. 5, 4 Qr., 1862.....	\$63,839 31	
By amount deposited to the credit of the United States, per covering Warrant No. 2, 1 Qr., 1863.....	183,606 10	247,445 41
By balance due from said State .....		\$7,093 26

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

J. H. ELA,  
Auditor.

To the First Comptroller of the Treasury.

\* Deposited after September 30th.

\$7,093 26.

TREASURY DEPARTMENT, COMPTROLLER'S OFFICE, }  
October 8, 1875.

I admit and certify that a balance of seven thousand and ninety-three and <sup>26</sup>/<sub>100</sub> dollars is due to the United States, as stated in the foregoing report.

WILLIAM HEMPHILL JONES,  
Acting Comptroller.

To the Register of the Treasury.

**EXHIBIT No. 11.**

Form 13. No. 39,283. Recorded February 8, 1884.

TREASURY DEPARTMENT, FIFTH AUDITOR'S OFFICE, }  
February 7, 1884.

I hereby certify that I have examined and adjusted an account between the United States and the State of California, on account of direct tax, Act August 5, 1861, and find that said State is chargeable, viz.:

To balance due from said State, per Report No. 10,813.....	\$7,093 26
--	------------

I also find that said State is entitled to credit:

By warrant in favor of the Treasurer, viz.:	
No. 2,566, dated June 30, 1883.....	\$495 72
Balance due the United States.....	6,597 54
	<hr/> \$7,093 26

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

D. S. ALEXANDER,  
Fifth Auditor, E. K.

To the First Comptroller of the Treasury.

\$6,597 54.

COMPTROLLER'S OFFICE, February 8, 1884.

I admit and certify that a balance of *six thousand five hundred ninety-seven dollars and fifty-four cents* is due to the United States as stated in the foregoing report.

WM. LAWRENCE,  
Comptroller.

By J. TARBELL,  
Deputy Comptroller, S. C. C.

To the Register of the Treasury.

TREASURY DEPARTMENT, REGISTER'S OFFICE, }  
June 18, 1886.

A true copy.

ROS. A. FISH,  
Assistant Register, P.

**EXHIBIT No. 12.****FEDERAL CLAIMS.**

In reference to the several claims of the State alleged to exist against the United States, I beg to report that the agent for this State at Washington, D. C., under the executive authority heretofore conferred upon him and duly ratified by the Legislature, has brought to the official attention of the proper authorities and departments of the United States, sundry claims of this State. While the reports made by him from time to time

in regard thereto show considerable and favorable progress, still, only two of such claims have been allowed and paid by the United States, namely, that of \$495 72 on account of the expenses incurred by the State in the year 1872 for the transportation of arms to the northern counties during the Modoc Indian war; and that of \$38,180 80, on account of the rebate of the fifteen per centum of the direct war tax levied upon and assessed to this State under the Act of Congress approved August 5, 1861 (U. S. Statutes, vol. 12, p. 296).

The total amount of the Federal direct war tax levied upon the State of California, under the aforesaid Act of Congress, was \$254,538 67. This the State assumed and made provision for its payment in the Act of the Legislature approved April 12, 1862, and of the sum, up to February, 1863, had paid \$247,445 41. This left the amount, still due from the State to the United States, \$7,093 26.

It was claimed by the agent of this State that, though the State failed to make her payment of this direct war tax within the time prescribed in said Federal statute, and though she was in consequence not legally entitled to the rebate of fifteen per centum thereof, as described in Section 53 of said Act, this State, nevertheless, was in equity entitled to said fifteen per centum rebate, since the collection and payment had been made without any expense whatever to the United States. By establishing this right in equity the agent succeeded in securing and collecting the rebate in the per centum mentioned.

In the settlement had between the United States and this State, arising under the two claims mentioned, the proper United States authorities deducted said sum of \$7,093 26 then delinquent and due the United States, and thereafter issued in the name of the Governor of California, a draft for the remainder, viz., \$31,583 26, upon the United States Sub-Treasurer at San Francisco. This amount, after deducting the commission for collection as fixed by the joint resolution of the Legislature adopted March 3, 1883, was by me paid over to the State Treasurer in the sum of \$23,847 96.

In this connection I beg to report that, under the belief that a proper effort, made by a competent person, to collect from the United States the old California Indian war debts would be crowned with success, I have duly appointed Captain John Mullan, the present agent, as agent also for such purposes, the appointment being subject to ratification by the Legislature. I have authorized him to present all the matters connected with the said war debts, including the interest paid by and due to this State on account of moneys heretofore expended and guaranteed by this State on account of Indian and other hostilities within its borders, to the proper United States authorities at Washington, with a view to the favorable recognition and payment of such claims. Such a presentation has been made by him, and the State may expect through his efforts an eventually favorable action in final adjustment.

The intelligence and fidelity displayed by Captain Mullan in the matters described fully reflect the confidence reposed in him by his selection for this special work, and I therefore recommend that the Legislature confirm the executive appointment of Captain Mullan made by me for the purposes above described.



**EXHIBIT No. 13.**

OFFICE OF TREASURER OF STATE,  
SACRAMENTO, November 1, 1862. }

*Hon. GILBERT R. WARREN, Controller of State, Sacramento, California :*

SIR: The warrant for sixty-three thousand eight hundred and thirty-nine dollars and thirty-one cents, which amount was to be paid to the United States Assistant Treasurer at San Francisco, on account of the Federal or National tax—an obligation assumed by the State of California—was duly paid.

But as said Assistant Treasurer, under his construction of his duties, refused to come to the seat of the State Government, either to receive from the Controller the warrant for said amount, or payment of the same, it became necessary to pay the same at San Francisco, and that on or before the thirtieth day of September, A. D. eighteen hundred and sixty-two, to secure the State the deduction of ten per cent allowed by Act of Congress, which deduction was the consideration for this State itself making the collection. Consequently, on the thirtieth September, ultimo, I paid to D. W. Cheesman, United States Assistant Treasurer at San Francisco, the said amount of sixty-three thousand eight hundred and thirty-nine dollars and thirty-one cents, and as the State is entitled to a deduction of ten per cent, the payment was, in effect, seventy thousand nine hundred and thirty-two dollars and fifty-six and two thirds cents—nine tenths being actually paid and one tenth being the State percentage. The receipt given for said payment is only for the amount actually paid, as said Assistant Treasurer said the reduction allowed must be settled with the auditing officers at Washington.

Said Assistant Treasurer, on the thirtieth of September, eighteen hundred and sixty-two, after counting the money so paid and giving change therefor (sixty-nine cents), declined giving his receipt for the same until he should be so instructed by the Secretary of the United States Treasury, and on said September thirtieth he so telegraphed to the said United States Secretary, and on seventh October received reply instructing him to receive said sum.

In addition to said ten per cent deduction, I have, from the amount placed in my hands, saved the further sum of four thousand four hundred and eighty-six dollars and thirty-nine cents, which, on your order, I propose to place in the State Treasury.

Under the Act of February twentieth, eighteen hundred and fifty, I supposed this last named sum would go into the General Fund; but as the National tax is not all paid, I think it advisable not to place this money in that fund until it is known that the receipts into the Federal Tax Fund during the approaching settlements of the County Treasurers will be fully sufficient to pay said tax, as in case of deficiency, I think this money should first be applied to the payment of said Federal tax.

If my desire could be gratified, a donation of this money should be made for the Nation, for the purpose of further assisting it in this time of peril, and as this would require the assent of the Legislature, it is for you to consider if it be not advisable to hold this money unused until legislative directions can be had.

The total of Federal tax assumed by the State is .....	\$254,538 66 $\frac{2}{3}$
The payment actually made is .....	\$63,339 31
The deduction to which the State is entitled is .....	7,093 25 $\frac{2}{3}$
	<u>70,932 56<math>\frac{2}{3}</math></u>
Leaving the amount still to be paid by the State.....	<u>\$183,606 10</u>
The saving of the State at this payment has been said deduction of 10 per cent. ....	\$7,093 25 $\frac{2}{3}$
And said sum saved on payment, of.....	4,486 39
Total.....	<u>\$11,579 64<math>\frac{2}{3}</math></u>

This includes every cent saved, and was impossible to make it greater under the circumstances. It is true the last Legislature anticipated saving a greater sum, but as the State failed to make any payment in June last, on which payment it would be entitled to fifteen per cent deduction, and as it had not sufficient money to make full payment in September, ten per cent was lost on the deficiency, for all which there was no remedy; the collections under the State laws being made too late to enable the State to receive the full benefits offered by Congress, and intended to be secured by the Legislature when it provided for the State to pay the tax.

Since completing said payment to the United States this is the first report made from this office, and I avail myself of the first opportunity as provided by law to advise you of the facts.

(Signed:)

D. R. ASHLEY, State Treasurer.

**EXHIBIT No. 14.**

Forty-eighth Congress, first session. S. 792.

In the Senate of the United States. December 18, 1883—Mr. Miller of California, asked and, by unanimous consent, obtained leave to bring in the following bill; which was read twice and referred to the Committee on Finance:

**A BILL**

*To adjust certain accounts between the United States and the several States and Territories and the District of Columbia.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be and he is hereby authorized and directed to credit each of the several States and Territories and the District of Columbia with the amounts of money heretofore laid upon and apportioned to said States, Territories, and District of Columbia, respectively, levied as a direct tax under the provisions of the eighth section of the Act of Congress approved August fifth, eighteen hundred and sixty-one, entitled "An Act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes;" and he shall thereafter state an account between the United States and each of said States, Territories, and District, respectively, and he shall pay to each thereof, out of any money in the Treasury not otherwise appropriated, such sums of money as may appear to the credit of each thereof upon the books of the Treasury arising from such settlements.*

**EXHIBIT No. 15.**

Forty-eighth Congress, first session. H. R. 110. Printer's No., 110.

In the House of Representatives. December 10, 1883—Read twice, referred to the Committee on Claims, and ordered to be printed.

Mr. Henley introduced the following bill:

**A BILL**

*To adjust certain accounts between the United States and the several States and Territories and the District of Columbia.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the Secretary of the Treasury be and he is hereby authorized and directed to credit each of the several States and Territories and the District of Columbia with the amounts of money heretofore laid upon and apportioned to said States, Territories, and District of Columbia, respectively, levied as a direct tax under the provisions of the eighth section of the Act of Congress approved August fifth, eighteen hundred and sixty-one, entitled "An Act to provide increased revenue from imports to pay interest on the public debt, and for other purposes;" and he shall thereafter state an account between the United States and each of said States, Territories, and District, respectively; and he shall pay to each thereof, out of any money in the Treasury not otherwise appropriated, such sums of money as may appear to the credit of each thereof upon the books of the Treasury arising from such settlements.

**EXHIBIT No. 16.**

WASHINGTON CITY, D. C., }  
January 10, 1884. }

**DIRECT TAX OF AUGUST 5, 1861.**

*To the Chairman Senate Committee on Finance:*

SIR: Senate Bill No. 795, introduced in the Senate on the eighteenth day of December, 1883, by Senator Miller of California, and referred to the Committee on Finance, provides that the Secretary of the Treasury shall credit each State with the amounts assessed against it for direct taxes under the Act of August 5, 1861. The effect of it will be to return to those States which have paid, the amounts of such assessments, and to release those which have not paid, from all taxes and from liability for them. The levy provided for in the Act of August, 1861, was for twenty millions, and it provided for a deduction of fifteen per cent if the same was paid by the last day of June; and ten per cent if paid by the last day of September, 1862; that is, giving the States the right to assume the payment of the amount, and thus avoid levying upon the real estate, on the one hand, and allowing the payers an equivalent to what it was supposed would be the expense to the Government for collecting it. Whilst the right of the Government to raise revenue by direct taxation is unquestionable, it is patent that this tax was in the nature of an enforced loan, and it was required to meet the great exigency then upon the country. Fifteen of the States and Territories still owe large balances on account of this tax, whilst

many of the others came forward promptly and assumed and paid it, or else it was collected from them in the mode provided by the statute, or else by crediting against it demands due to them from the Government.

The report of the Secretary of the Treasury to the Senate through resolution of March 28, 1884, asking for a statement of this war tax, shows that the compliance with the law has been very unequal and altogether partial. Several States now owe the Government from a quarter to half a million of dollars each on account of this tax, whilst others have paid in full more than twenty years ago.

An examination of the question clearly indicates that one of two courses should now be adopted in relation to this tax; that in order to equalize this burden the States which have paid should be credited with the amount assessed against them, and be paid the balance upon the adjustment of the accounts, or else that the Government should proceed to enforce the Acts against the delinquent States, and collect the balance now remaining unpaid.

To the latter course many objections will at once suggest themselves. The first, perhaps, would be that the Government does not need the money; the time in which the States can assume it has passed, under the provisions of the law, and the machinery for its collection has passed out of use. An appropriation will therefore be necessary in order to provide the suitable machinery; and the enforcement of the Act can only be made now with the additions of the penalty of fifty per centum, and, according to the construction of the Treasury Department, a sum as interest at the rate of ten per centum from the first day of July, 1862, which would be a sum of two hundred and seventy per cent, in addition to the quota as originally fixed. Unnecessary as this would be, it is clearly more equal and just, and therefore more desirable, than that Alabama and Georgia should each owe the Government over half a million dollars, and Mississippi, Tennessee, Texas, and Virginia about a quarter of a million each; whilst the Government has had the use for more than twenty years of the full quota promptly paid by many other States, and whilst from South Carolina it has not only actually collected more than was due, but has done so by selling out an entire town and over fifty-two thousand acres of agricultural land at merely nominal prices, the titles to which have been declared valid by the Supreme Court of the United States.

On the other hand, it seems but reasonable that the amounts paid should be returned to the several States that have paid said tax, leaving them to adjust any question which may arise with their own citizens in those cases in which the amounts have been collected from individuals, personally, or by the sale of property, and thus avoid the unnecessary expense of collecting the balances, which are not needed, and avoid the constant issues and friction that have arisen and are constantly arising between the States and the General Government, in consequence of the amounts earned by the several States, which, instead of being paid in cash to said States are now credited upon their delinquent direct tax of 1861, upon the books of the United States Treasury Department.

Sound statesmanship suggests, provided it does not now even demand, that all the unadjusted accounts between the United States and the several States should be now adjusted, and the logic and propriety of an adjustment of this kind was forcibly and clearly shown in the language of a distinguished Senator during the Forty-seventh Congress, and now a member of the Senate, Senator Morgan of Alabama, and whose words are found recorded on page 4112 of the Congressional Record, in the proceedings of the Senate on May 19, 1882, and are as follows, to wit:

Let us wipe out all of these debts; let us make a clean book of it between the Government of the United States and the various States, so far as these debts are concerned.

It is right and proper it should be done, and in effect this has been done.

It seems to me there could scarcely be a more hazardous condition of affairs in this country than for a State to be indebted to the United States Government, or for the Government to be indebted to a State. Such relations ought not to exist between the States and the Union. Their transactions ought to be cash transactions. It is contrary to sound policy to have States indebted to the Government, or to have the Government indebted to the States.

If either the Government of the United States, or of any State, should refuse to pay its debts, there is no remedy for it but war, and we ought never to allow ourselves to be put in a condition where the only remedy and redress for our differences and difficulties is war.

Who can collect a judgment out of a State, although the United States may be plaintiff in that judgment?

Who can collect a judgment against the United States, although the State of New York may be plaintiff in the judgment?

There is no compulsory power to reach the exigency. If you have to resort to compulsion under such circumstances, war is the only compulsion to which you can resort.

Therefore, sir, I protest that we never allow the relation between the States and the Federal Government to become of such a character as that strife might be the result.

It would be a healing act which would benefit these people greatly, if we could now to-day clean the books of the Treasury of all the obligations between the Government of the United States and the States, growing out of these two statutes of which I speak.

I submit this to the candid judgment and consideration of Senators. If they are not prepared to do it—if they are not willing to do it—I hope the day may soon arrive when they will be willing.

I am quite as sure as I now address the Senate, that the people of this country, from border to border, would approve of an arrangement by which all these debts were to be obliterated.

Respectfully submitted.

JOHN MULLAN,  
State Agent and Counsel for California.

#### EXHIBIT No. 17.

Forty-eighth Congress, first session. House Bill No. 110.

House Bill No. 110 was introduced by Hon. Barclay Henley, in the House, December 10, 1883, and referred to the House Committee on Claims, and is as follows, to wit:

#### A BILL

*To adjust certain accounts between the United States and the several States and Territories and the District of Columbia.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the Secretary of the Treasury be and he is hereby authorized and directed to credit to each of the several States and Territories, and the District of Columbia, with the amounts of money heretofore laid upon and apportioned to said States, Territories, and District of Columbia, respectively, levied as a direct tax under the provisions of the eighth section of the Act of Congress, approved August fifth, eighteen hundred and sixty-one, entitled "An Act to provide increased revenue from imports to pay interest on the public debt, and for other purposes;" and he shall thereafter state an account between the United States and each of said States, Territories, and District, respectively; and he shall pay to each thereof, out of any money in the Treasury not otherwise appropriated, such sums of money as may appear to the credit of each thereof upon the books of the Treasury arising from such settlements.

The intention and effect of this bill is to refund to the several States and Territories, and the District of Columbia, and people of all thereof, the amounts of the direct tax which each thereof respectively have heretofore paid into the Treasury of the United States, under the direct tax Acts of Congress, and to release such States, Territories, and District, and people thereof, from hereafter paying such amounts as may appear delinquent or due by them, as shown upon the books of the United States Treasury Department, thereby equalizing the burden heretofore placed upon them, and reinstate all of them upon an equal footing in regard to said tax, and restore their financial relation with the General Government as the same existed prior to August 5, 1861, and June 7, 1862.

In some instances certain of the States and Territories assumed and paid this direct tax in full; in others only partial payment has been made by certain States, and in others no portion has been either assumed or paid at all.

This direct tax was, in some respects, in the nature of a forced loan, and the effect of the passage of this bill will be to refund this loan to the States, Territories, District, and persons that have paid same, and *pro tanto*, and to release from paying in all instances whenever any of the States or persons have failed to pay, and thus wipe out from the books of the Treasury Department all evidences of delinquency on the part of any State and people thereof.

Under the present rulings of the First Comptroller of the Treasury, whenever any one of said delinquent States earns any sum, either by a direct appropriation from Congress or from the five per centum of the net proceeds of the sales of the public lands, or allowances for advances made during any war, or from any other source whatsoever, said amounts, instead of being paid over to such State so earning, receiving, or being allowed same, are credited (as partial payments) to the amount apportioned to said States and not paid, but delinquent, and thereby reducing their said debt to the United States *pro tanto*.

The machinery by which this direct tax has been collected has not been uniform in its working and application, and the rulings of the Treasury Department thereon have not been in perfect harmony. In some instances the States paid said tax *direct*, and in other instances the tax has been levied directly upon the property of citizens within the delinquent States, and in many instances with great distress.

During the administration of the Treasury Department under Hon. H. McCulloch, and of the First Comptroller's office under Hon. A. G. Porter, not only were certain sums paid to the delinquent States, notwithstanding such delinquency, as in the case of Georgia, but even a refusal was made to permit a delinquent State, as in the case of Texas, from ever paying the same to the United States. This rule adopted by Hon. A. G. Porter has not been followed by the present Comptroller, Hon. William Lawrence, but just the opposite is the rule, and is as hereinbefore declared to be.

When the State of Texas offered to assume the payment of the uncollected portion of the direct tax due by her under the provisions of the Act of June 7, 1862, the Hon. H. McCulloch, on December 28, 1866, refused to receive same, as fully appears from his letters as Secretary of the Treasury to Hon. J. W. Throckmorton, Governor of Texas, and is as follows:

TREASURY DEPARTMENT, December 28, 1866.

SIR: I have to acknowledge the receipt of your letter of December fourteenth, in which you inclose a copy of an Act of the Legislature of Texas, assuming payment of the uncollected portion of the direct tax due from Texas under the provisions of the law of June 7, 1862. You ask for a statement showing the amount collected and the sum still due. The law under which this tax has been collected contains no provision authorizing its assumption by a State, the permissive clause of the Act of August 5, 1861, not having been reenacted in that of June 7, 1862. In the absence of such a provision, this department would not be justified in recognizing such assumption. In my annual report of December, 1865, I recommended that sales under this law should be suspended until the States interested had an opportunity of assuming payment of the tax, but this recommendation has only been so far carried out as to authorize the suspension of collections for a definite time, no provision for assuming the debt being contained in the law which gives authority for such suspension.

Under such circumstances it is unnecessary to reply in detail to that portion of your letter which asks for a statement of collections, or to your suggestion for the acceptance of Texas indemnity bonds in part payment.

(Signed:)

H. McCULLOCH,  
Secretary of the Treasury.

Hon. J. W. Throckmorton, Governor of Texas.

TREASURY DEPARTMENT, March 13, 1867.

SIR: I am in receipt of your letter of February nineteenth, proposing a plan for payment of the direct taxes still due by citizens of Texas to the United States. As the plan

proposed proceeds wholly upon the assumption that payment of their taxes may be accepted from the State government, I am under the necessity of calling your attention to the inclosed copy of my former letter of December 28, 1866; a letter which, from the tenor of that just received, must, I fear, have failed to reach you.

As the direct tax laws remain unchanged since that letter was written, I have only to repeat that this department is not at liberty to accept payment in any other manner, or through any other agencies, than as proposed in those laws.

(Signed:)

H. McCULLOCH,  
Secretary of the Treasury.

Hon. J. W. Throckmorton, Governor of Texas.

So that it would appear that while the head of the Treasury Department at one date construing that clause of the Constitution which provides for direct taxation in the following language: "Representation and direct taxes shall be apportioned among the States according to their respective numbers," held this direct tax law to mean that tax was due and payable by the citizens of the States, and belonging to a class whose property was taxed, we find that same head, at another date, holding that such tax was due by the State in its political capacity."

Senate Ex. Doc. 24, first session, Forty-sixth Congress, contains a most complete history of this character of legislation, and of the liability of the States in the premises, and the official views therein contained are supported by authority—legislative and judicial—from the date of the adoption of the Articles of Confederation, July 12, 1776, to May 24, 1879, the date of said report of Hon. A. G. Porter, then First Comptroller of the Treasury Department; and also contains all the statutes of the United States relating to direct taxes in this country by Congress, from 1798 to 1868, which, with Senate Ex. Doc. 85, second session, Forty-seventh Congress, and the letter of the Treasury Department Officer of Internal Revenue, May 3, 1880, contain much valuable information on this subject; and to all of which your honorable committee is now referred.

From these reports it would appear that the amount of money that would be refunded, under this bill, to the several States, Territories, and people thereof, that have heretofore paid said tax, would aggregate the sum of about fifteen millions of dollars.

Wherefore, and in view of the foregoing, and of the rulings of the Treasury Department under the Act of August 5, 1861 (U. S. Stats. vol. — p. —) and those under the Act of June 7, 1862 (U. S. Stats. vol. — p. —), it is suggested that a substitute for said House Bill No. 110 be favorably reported by honorable committee to your honorable body, and of the form, as follows, to wit:

#### A BILL

*To adjust certain accounts between the United States and the several States and Territories and the District of Columbia.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be and he is hereby authorized and directed to credit each of the several States and Territories and the District of Columbia, respectively, with the amounts of money laid, levied, apportioned, and charged upon them, respectively, as a direct tax under the provisions of the Act of August 5, 1861, entitled "An Act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes;" and the Act of June 7, 1862, entitled "An Act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes;" and he shall thereafter state an account between the United States and each of said States, Territories, and District of Columbia, respectively, and he shall pay to each thereof, out of any money in the Treasury not otherwise appropriated, such sums of money as may appear to the credit of each thereof upon the books of the Treasury arising from such settlements.*

Very respectfully,

JOHN MULLAN,

Agent and Attorney for the States of California, Oregon, and Nevada.

#### EXHIBIT NO. 18.

#### LETTER FROM THE SECRETARY OF THE TREASURY,

Recommending the passage of bills H. R. No. 110 and Senate No. 795, to adjust certain accounts between the United States and the several States and Territories and the District of Columbia.

TREASURY DEPARTMENT, June 14, 1884.

Hon. A. J. WARNER, Chairman of Sub-Committee of Committee on Claims, House of Representatives:

SIR: I have the honor of acknowledging the receipt from you of H. R. Bill No. 110, entitled "A Bill to adjust certain accounts between the United States and the several States and Territories and the District of Columbia."

This bill relates to the direct tax of \$20,000,000 annually laid upon the United States, and apportioned to the States, the Territories, and the District of Columbia, under the Act of Congress passed August 5, 1861 (12 Stat. at Large, p. 294).

The purpose of the bill is to relieve and discharge from further liability for that tax those States and Territories which have not paid the portion thereof apportioned to them respectively; and to repay, out of any money in the Treasury not otherwise appropriated, to those States and Territories which have paid any portion, the sums by them respectively paid. Though by the Act above cited this tax was made an annual one, an attempt to collect it for more than one year has never been made. By that attempt there were collected about \$15,000,000, principally from the States which did not seek to go out of the Union; and there were left uncollected about \$5,000,000, principally in the States which did seek to go out of the Union. The sum uncollected remains a charge against these States, and, for the purposes of this letter, it may be assumed that it is a valid and enforceable charge. It is plain, however, that no legislator at this day would propose to raise revenue by a tax of that kind. There is no need of resorting to such methods. The revenues of the Government from sources not so extraordinary, and collectible by means and appliances not so objectionable as those involved therein, are ample for its purposes. They are, indeed, superabundant, and the concern of statesmen is rather how they may be reduced than how they may be increased. The Government then needs not the money to be got by enforcing this tax.

At the same time it is plain that to enforce it would put a grievous burden upon the people of the States which are in default in payment. It needs no array of facts to show this. Congress, in one, if not both branches, has this session considered the proposition of large pecuniary aid to those people to help them place and keep up common schools, and the Senate has passed a bill therefor.

If there be need for that succor, there would be harm in enforcing this charge. It is to be considered, too, that while taxes are seldom looked upon with favor, this would be specially objectionable. The purpose for which it was laid can be remembered with distaste. It can scarcely be expected that there would be cheerful aid from the State authorities in the enforcement of it. It may be doubted whether there would be any. Indeed it would, without further legislation, have to be enforced by the machinery provided by the Act under which it was laid. This would call for the

appointment of numerous Federal officials, who would go among the people as obnoxious exactors. I think it must be conceded that there is, and ever will be, great reluctance to ever setting about the collection of this tax. That it never had great favor, is shown by that it was never put in force but one year. In practical effect, then, the law for it is obsolete. Why, then, should there remain this unenforced liability, a menace to the people, the enforcement of which is called for by no public need, nor by any public opinion?

In my judgment, the people and the property of the States in default should be relieved and discharged from it.

But to give such relief and discharge would be to put an inequality of burden upon the States which paid, unless they in turn were in some way relieved. This the bill proposes to do by repaying to them the sums received from them. Assuming that the tax was lawful, and the collection, as far as made, was warranted, this, apart from the circumstances, would be a proposition to donate to the States surplus moneys of the United States—a proposition which I should not favor. But, as connected with the proposition to discharge from onerous and needless liability one portion of the people, it takes on a different character; it is presented as an adjustment between different bodies of the people, and is worthy of acceptance. Indeed, it would be unjust to the people of the loyal States to release the people of the once insurrectionary States from their liability, without refunding to the former the sums paid by them, and there are analogies in the legislation of Congress. Acts have been passed refunding to States moneys raised by them for the raising, arming, and equipping of troops for the Army of the United States in the civil war, and for making other refunds of like character. The purpose of laying this direct tax was to aid in the ultimate payment of the extraordinary expenses of the Government caused by the civil war. The raising, arming, and equipping of troops by the States served to keep down those expenses for the time. It was a voluntary act upon the part of the States. There is no violation of principle or fundamental law in repaying to the States from the funds of the United States the cost thereof. The purpose and effect of this bill is not so unlike in nature to that as not also to be freed from the objections to a bald distribution among the States of what are called the surplus revenues of the United States.

Under the peculiar facts of the case, and as it is not likely to become a precedent for other disposals of Federal moneys, my judgment is, that the proposed measure is a good one. It is true that exactly equal justice cannot be done in carrying out the proposition of the bill. Thus, in some of the Southern States the tax was to some extent enforced. Tax sales were made of pieces of real estate in instances for less than the value of them. Only the surplus of purchase money over the tax and charges has been available to the owners, and they have lost the difference between that and the total of the purchase money, and between the purchase money and the real value.

On the other hand, in most, if not all, of the Northern States, the payment to the United States of the tax was assumed by the State government, which collected the amount of its own people in its own tax levy. Of course, in the changes of citizenship and of ownership of taxable property, while a repayment into the State Treasury will tend to reduce the amount of State tax, it will not inure to the benefit of some of those who in 1861 were taxpayers. But these failures of full and general compensation in dealing with transactions so long past must ensue, and are not to be potentially urged against proposed measures, which in the main do work equal benefit.

It is worthy of consideration, too, whether this is not a suitable occasion to deal with the matter of the Federal surplus moneys deposited or to be deposited with the States by the Act of 1836. (5 Stats. at Large, 55, 207.)

Why may not those States which made payment of their portion of the direct tax under the Act of 1861 be debited in the settlement proposed by the bill before your committee with the amount of that deposit made with them, and be paid the balance, and thus the liability of the United States under the deposit Act be extinguished?

Thus the anomalous state of things existing under the last named Act would be ended, so far as those States are concerned.

It is true that some of the States, as Virginia and Arkansas, for instance, may not have received their full proportion of the deposit fund of 1836; and it is true that in remitting the liability of the States to repay the deposit with them, there will, as to some of them, be no claim for a refund under this bill against which that liability may be set off; and that, therefore, complete equality of benefit and burden may not be realized. It is well to consider, however, whether, inasmuch as it is desirable that the relation of creditor and debtor between the United States and the States be closed, it should not be done at this favorable opportunity, though at the sacrifice of complete equality.

In connection herewith, I refer to the fifty-third section of the Direct Tax Act (see 12 Stats. at Large, pp. 311, 312), and suggest that there may be instances in which the principle of that section may be applied.

I also inclose herewith a communication to me from the First Comptroller of the Treasury, which presents views in accord with some of those expressed by me, and gives tables of value, and a draft of a bill; and to this communication I ask attention.

Very respectfully,

CHAS. J. FOLGER, Secretary.

#### EXHIBIT No. 19.

TREASURY DEPARTMENT, FIRST COMPTROLLER'S OFFICE, }  
WASHINGTON, D. C., May 2, 1884. }

Hon. CHARLES J. FOLGER, *Secretary of the Treasury*:

SIR: I have the honor to state that I have received a letter from the Hon. Wade Hampton of the Senate of the United States, dated twenty-fourth ultimo, transmitting to me a copy of Senate Bill No. 795, to adjust certain accounts between the United States and the several States and Territories, and the District of Columbia, and asking me to give my views on it.

I have also received a letter dated twenty-fifth ultimo, from the Hon. Barclay Henley of the House of Representatives, transmitting a copy of House Bill No. 110, which is in form similar to said Senate Bill.

This latter letter is addressed to you and to me jointly, "to be furnished with the views" of the Treasury Department, and with mine, also, in relation thereto.

The object of these bills is to remit, so far as not collected or paid, the direct taxes laid upon and apportioned to the States, Territories, and District of Columbia, under the Direct Tax Act of August 5, 1861, and to refund to such States, Territories, and District, respectively, the amount of such taxes, so far as paid in any mode whatever.

I have considered the subject with care, and now have the honor to state that, in my judgment, it is alike just, judicious, and practicable to remit

all such taxes not yet collected, to refund the amounts paid in any form by any State or Territory, and to refund to private persons, or their legal representatives, all amounts of such tax by them paid or collected by sale of real estate or otherwise.

I have accordingly prepared the draft of a bill to effect these objects, which I have the honor to submit for your consideration.

I will briefly state some of the reasons in support of the views above presented. The amounts apportioned to States which have not in any form paid or been credited with any sums, as the accounts stand in this office, are as follows:

Alabama .....	\$529,313 33
Arkansas .....	261,886 00
Dakota .....	3,241 33
Florida .....	77,522 67
Georgia .....	584,367 33
Louisiana .....	385,886 67
Mississippi .....	413,084 67
New Mexico .....	62,648 00
North Carolina .....	576,194 67
South Carolina .....	363,570 67
Tennessee .....	669,498 00
Texas .....	355,106 67
Utah .....	26,982 00
Virginia .....	\$937,550 67
Less .....	208,479 65
	729,071 02
Total .....	\$5,038,373 03

These are the sums charged against the States and Territories mentioned, all of which, as stated, appear by the records of this office as unpaid. It is proper to say, however, as to all these—except Alabama, Dakota, New Mexico, and Utah—that payments for each have been made into the Treasury by Direct Tax Commissioners, which have not been settled in this office.

Most of these payments are shown in the letter of the Commissioner of Internal Revenue, appended to the Georgia case, 4 Lawrence Compt. Doc. 380. So, to a limited extent, other payments have been made but not yet credited.

#### I.

As to the amounts thus apportioned and which remain unpaid, only three things can be done:

1. They can be paid by an increase of taxes in these States, if they should respectively assume payment.
2. Or they can be paid by enforcing collection by Act of Congress of assessments against the real estate of private owners thereof, or;
3. They can be left uncollected.

*First*—It is certainly well understood that the burden of taxation under State and local authority in these States is such that it cannot be desirable to increase it. It is not at all certain that these States would increase and collect taxes for this purpose. With the general feeling which now so fortunately prevails in favor of Congressional aid to States to promote common school education, it is quite evident that Congress will not require any such taxes to be levied.

There is no necessity now for requiring the payment of these amounts. The revenues of the Government are more than abundant, and it is not at all probable that conditions will ever exist to require the payment of these amounts.

*Second*—The same reasons operate against enforced collections under the authority of an Act of Congress. In fact, it is believed that there is no desire now on the part of any class of citizens that the payment of this tax should be enforced.

This in part grows out of the consideration having almost universal assent, that direct taxes are unequal and hence unjust.

The apportionment against States is made on the basis of population and not wealth, and is hence unequal as between States.

When collection is enforced by authority of Congress against real estate, the inequality and injustice are aggravated, because the burden is imposed on a species of property generally less productive of profit than any other, and hence least able to bear it, and chattel wealth, including a vast amount of corporate resources, constituting in all a large proportion of the aggregate of all forms of property, totally escape from all burden, while requiring and receiving more of the protecting care of Government, and hence realizing benefits at the expense of the owners of real estate.

The objectionable character of direct taxes is shown by the fact that they have been authorized but three times since the adoption of the Constitution. And although the Act of August 5, 1861 (12 Stats. 294) provided "that a direct tax of twenty millions of dollars be and is annually laid upon the United States," yet the purpose to collect all beyond one year has been abandoned.

It may, then, be assumed that the direct taxes collected were unequal and unjust as between the States, and still more so among the property owners of the United States.

A wrong having thus been done, it should be repaired by remitting the taxes not collected, and refunding those collected upon the same principle sanctioned in many statutes of remitting taxes improperly assessed, and of refunding those which have been improperly collected.

3. The result will undoubtedly be that the amounts of direct tax not yet paid will remain unpaid.

#### II.

In view of all this, the inquiry is now presented whether anything, and if so, what, should be done as to (1) the States which have assumed and paid their respective quotas of the direct tax, and (2) as to those in which sums allowed by accounting officers in their favor respectively have been withheld and credited on account of the quota of such State.

It seems to me advisable to refund to such States the amount so assumed and paid or withheld. This view is supported by all the considerations already mentioned, which show the inexpediency of enforcing payment in the States the quotas of which have not been paid. The policy of refunding is supported by the manifest injustice of retaining money collected as direct taxes from some States from which others are exempt.

Equality of burdens, as among the States, in those cases in which they are imposed in fixed proportions directly upon the real estate therein, is simple justice.

In such cases inequality is injustice.

Assuming that no more of the direct tax should be collected, the only mode of securing equality is to refund the direct taxes collected. If this refund should be made, States would receive money substantially as follows:



Alabama.....	\$8,491 46	Missouri.....	\$761,127 33
Arkansas.....	184,082 18	Nebraska.....	19,312 00
California.....	247,941 13	Nevada.....	4,592 67
Colorado.....	1,516 89	New Hampshire.....	218,406 67
Connecticut.....	308,214 00	New Jersey.....	450,134 00
Delaware.....	74,683 33	New Mexico.....	62,648 00
District Columbia.....	49,437 33	New York.....	2,603,918 67
Florida.....	43,529 81	North Carolina.....	386,194 45
Georgia.....	71,407 75	Ohio.....	1,567,089 33
Illinois.....	1,146,551 33	Oregon.....	35,140 67
Indiana.....	904,875 33	Pennsylvania.....	1,946,719 33
Iowa.....	452,088 00	Rhode Island.....	116,963 67
Kansas.....	71,743 33	Tennessee.....	387,722 06
Kentucky.....	716,695 33	Texas.....	130,008 06
Louisiana.....	268,515 12	Vermont.....	211,068 00
Maine.....	420,826 00	Virginia.....	515,569 22
Maryland.....	436,823 33	West Virginia.....	208,479 65
Massachusetts.....	824,581 33	Washington Territory.....	7,268 16
Michigan.....	501,763 33	Wisconsin.....	468,543 11
Minnesota.....	108,524 00	South Carolina.....	377,961 30
Mississippi.....	74,742 57		

Tables showing the condition of the direct tax accounts with the several States and Territories will be found appended to the Georgia case (4 Lawrence Comp. Dec. 376, 380). The first table shows the accounts as they stand adjusted in this office. The second table shows some payments not yet adjusted in this office, and hence the apparent discrepancy between the tables. There are still other credits to a limited extent as to some States, not shown by either of these tables.

## III.

In some of the States, the Tax Commissioners under the direct tax of July 7, 1862 (12 Stat. 432), sold the real estate of many private owners, and thus collected in part the quota of tax apportioned to such States respectively. The Senate and House bills submitted for my consideration propose to refund directly to the State the taxes thus collected in each State. It is submitted that it would seem more equitable and just to refund directly to the private parties who paid such taxes, or whose lands were sold to enforce payment. This is the policy established as to the "surplus proceeds" arising from sales "after satisfying the tax, costs, charges, and commissions," Act August 5, 1861 (12 Stat. 304, Sec. 36); Act June 7, 1862 (12 Stat. 422); Act June 8, 1872 (17 Stat. 382); Act March 3, 1883 (22 Stat. 595). It is not perceived that any State can have any claim to a refund of money paid by its citizens. It is believed the draft of a bill herewith submitted may be made the basis of a judicious mode of disposing of the subject to which it applies. The last clause of section two of the bill is added by reason of the undoubted rule of law learnedly discussed and clearly stated by the Supreme Court in *United States v. Ross*, 92 U. S. 284.

I append hereto a table showing with substantial accuracy the amounts of taxes remaining uncollected in several States and Territories, and which it is proposed to remit, and the amounts which it is proposed to refund to the several States and Territories.

I have the honor to be, very respectfully,

WILLIAM LAWRENCE, Comptroller.

TABLE.

Statement of the Condition of the Direct Tax Accounts of the several States and Territories and the District of Columbia, under Acts of August 5, 1861, and June 7, 1862, as appears from the Books of the Register's Office.

STATE OR TERRITORY.	Amount Imposed.	Amount Paid.	Fifteen per Cent Allowance.	Balance Due United States.
Alabama.....	\$529,313 33	\$8,491 46		\$520,821 87
Arkansas.....	261,886 00	184,082 18		77,803 82
California.....	254,538 67	247,941 13		6,597 54
Colorado.....	22,905 33	1,516 89		21,388 44
Connecticut.....	308,214 00	261,987 90	\$46,232 10	
Dakota.....	3,241 33			3,241 33
Delaware.....	74,683 33	74,683 33	*4,350 50	
District of Columbia.....	49,437 33	49,437 33		
Florida.....	77,522 67	43,529 81		33,992 86
Georgia.....	584,367 33	71,407 75		512,959 58
Illinois.....	1,146,551 33	974,568 63	171,982 70	
Indiana.....	904,875 33	769,144 03	135,731 30	
Iowa.....	452,088 00	384,274 80	67,813 20	
Kansas.....	71,743 33	71,743 33		
Kentucky.....	713,695 33	606,641 03	107,054 30	
Louisiana.....	385,886 67	268,515 12		117,371 55
Maine.....	420,826 00	357,702 10	63,123 90	
Maryland.....	436,823 33	371,299 83	65,523 50	
Massachusetts.....	824,581 33	700,894 14	123,687 19	
Michigan.....	501,763 33	426,498 83	75,264 50	
Minnesota.....	108,424 00	92,245 40	16,278 60	
Mississippi.....	413,084 67	74,742 57		338,342 10
Missouri.....	761,127 33	646,958 23	411,869 10	
Nebraska.....	19,312 00	19,312 00	(See note.)	
Nevada.....	4,592 67	4,592 67		
New Hampshire.....	218,406 67	185,645 67	32,761 00	
New Jersey.....	450,134 00	382,614 83	67,519 17	
New Mexico.....	62,648 00	62,648 00	(See note.)	
New York.....	2,603,918 67	2,213,330 86	390,587 81	
North Carolina.....	576,194 45	386,194 45		190,000 22
Ohio.....	1,567,089 33	1,332,025 93	235,063 40	
Oregon.....	35,140 67	35,140 67		
Pennsylvania.....	1,946,719 33	1,654,711 43	292,007 90	
Rhode Island.....	116,963 67	99,419 11	17,544 56	
Tennessee.....	669,498 00	387,722 06		281,775 94
Texas.....	355,106 67	130,008 06		225,098 61
Utah.....	26,982 00			26,982 00
Vermont.....	211,068 00	179,407 80	31,660 20	
Virginia.....	†729,071 02	515,569 72		213,501 30
West Virginia.....	†208,479 65	181,306 93	27,172 72	
Washington.....	7,755 33	4,268 16		3,487 17
Wisconsin.....	519,688 67	429,196 68	39,346 43	51,145 56
South Carolina.....	363,570 67	377,961 30	†14,390 63	

\*Included on compromise.

†Joint resolution February 25, 1867, authorized the Secretary of the Treasury to transfer \$208,479 65 of the amount originally appropriated to Virginia to the State of West Virginia.

‡Overpaid.

## NOTE.

Nebraska:	
Amount collected.....	\$4,281 60
Amount allowed by Act of August 7, 1882 (22 Stat., p. 314).....	15,030 40
	\$19,312 00
New Mexico:	
Amount allowed by Act of July 1, 1862 (12 Stat., p. 489).....	62,648 00

## A BILL.

Be it enacted, etc., That the Secretary of the Treasury be and is authorized and required (1) to repay to the proper officer of each State the amount paid by such State for direct taxes laid upon and apportioned to it, as a direct tax under the Direct Tax Act of August 5, 1861, and (2) to pay

to the proper officer of any such State any and all sums allowed by the accounting officers of the Treasury Department as due to it, but withheld and credited on account of such direct tax; and (3) to place to the credit of the Commissioners of the District of Columbia in the Treasury of the United States a sum equal to the amounts paid by or collected from said District on account of said direct tax, and (4) to cause to be audited by the proper accounting officers of the Treasury Department and paid to the original legal owner or owners of every lot or parcel of land sold for non-payment of such taxes, or to his or their legal representatives, the amount paid at such sales or otherwise collected after deducting the cost thereof including charges and commissions not otherwise paid.

And all such taxes laid upon any State but not paid, are hereby remitted, and the charges made against such State therefor are canceled. All accounts with any State shall be so adjusted that taxes not collected are remitted and amounts paid shall be refunded.

And a sufficient sum of money is appropriated, out of any money in the Treasury not otherwise appropriated, to make the payment herein authorized. The word "State" herein shall include "Territory" and the District of Columbia, so far as necessary to effect the objects of this Act.

SEC. 2. In making payments as aforesaid to the original legal owner or owners, or their legal representatives, of any lot or land sold for non-payment of direct taxes, and for refunding of the surplus proceeds of such sales as now authorized (Act August 5, 1861, 12 Stats. 304, Sec. 36), and for refunding moneys collected or repaying money withheld, evidence of payment to any officer authorized to receive it shall be deemed a payment into the Treasury of the United States.

### EXHIBIT No. 20.

Forty-eighth Congress, second session. House of Representatives. Report No. 2486.

#### PAYMENT OF DIRECT TAXES.

February 4, 1885—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Price, from the Committee on Claims, submitted the following

#### REPORT.

[To accompany bill H. R. 6047.]

The Committee on Claims, to whom was referred the bill (H. R. 6047) to adjust certain accounts between the United States and the several States and Territories and the District of Columbia, has had the same under consideration, and reports:

Under the Act of August 5, 1861 (12 Stat. at L. 292), a direct tax of \$20,000,000 was laid upon the United States, and was apportioned amongst the different States and Territories, and the District of Columbia, based on population.

By Section 53 it was provided that each State might assume the payment of its quota thereof, and if it did so on or before the second Tuesday in February next, after the passage of the Act, it should have a deduction of fifteen per cent on so much of the quota of direct tax apportioned to such State in lieu of the compensation of officers for collecting the tax as was

actually paid into the Treasury on or before the last day of June, and a deduction of ten per cent upon so much as should be paid into the Treasury thereafter and before the last day of September of that year.

Some of the loyal States assumed their quotas, whilst others did not do so. Of those which assumed the payment, some paid prior to the last of June, others prior to the last day of September, whilst some of them have only paid in part, and still owe balances.

Of the loyal States which did not assume their quotas, the amount thereof has been collected from some in full by the First Comptroller stopping in the Treasury sums going to them on account of five per cents from sales of public lands and other allowed claims in their favor against the United States.

An Act for the collection of direct taxes in insurrectionary districts within the United States was passed June 7, 1862. (12 Stat. at L. 422.) This contained no provision for the assumption of its quota by the insurrectionary States. Under this Act a portion of the quota of some of the States was collected directly from the owners of real estate, and other portions were collected by sales of real estate, whilst from others nothing whatever was collected.

Since the war, as in the case of loyal States, the First Comptroller has withheld and applied to the quota of these States such sums as they were entitled to receive on account of five per cents from the sales of public lands or upon other allowed claims in favor of these States respectively against the United States.

The quota of each State is not a liability upon the State as such, but upon the real estate of the people of the State, and was by the law made a lien upon each piece thereof in proportion of its value to the aggregate value of the real estate in that State.

The quota of each State and Territory has been charged to it upon the books of the Treasury, and such sums as have been paid or collected, whether directly or by sale of property, has been credited against this quota, as has also all such sums as were going to said State on account of five per cents from sales of public lands and other allowed accounts. This system of withholding sums due to States and crediting them on account of this tax due by its citizens (or by only a portion of its citizens where some have paid) is a source of constant dissatisfaction and friction, and at the last session of Congress a bill was passed providing that a claim should be paid directly to a State in money for the purpose of avoiding its being thus credited, and a bill is now pending in the House to pay in money to a State an amount which has been credited in the Treasury upon its quota of this direct tax. The extreme undesirability of these issues over accounts between the States and the General Government cannot be overstated, and is so apparent as not to require to be more than mentioned. The injustice, too, of the utter inequality of payments is so apparent as to require no argument as to the importance of adopting some mode of adjusting and equalizing them, and if this cannot be done absolutely, then at least as far as is practicable and possible.

To do this is the purpose of the bill under consideration. It provides that the account of each State and Territory be credited with a sum equal to all collections made from each State and Territory, or any citizens thereof, under the Act of Congress approved August 5, 1861, and Acts amendatory thereto, with an additional sum of fifteen per centum on such payments made without cost to the United States, and also to relinquish all claims for all sums remaining unpaid on said direct tax. This will give to those States which assumed and paid their quotas the benefit of the deductions

to which they thus entitled themselves. In those cases in which the tax has been collected from individuals, either in money directly or by sale of land, it provides, by an amendment herewith submitted, that the amount thus paid back shall be made to the State in trust for those of her citizens who have paid the same.

The bill was fully and carefully considered by the late Secretary of the Treasury, Hon. Charles J. Folger. On June fourteenth, ultimo, he wrote a letter, in which he uses the following language:

The purpose of the bill is to relieve and discharge, from further liability for that tax, those States and Territories which have not paid the portion thereof apportioned to them respectively; and to repay, out of any money in the Treasury not otherwise appropriated, to those States and Territories which have paid any portion, the sums by them respectively paid. Though by the Act above cited, this tax was made an annual one, an attempt to collect it for more than one year has never been made. By that attempt there were collected about fifteen millions of dollars, principally from the States which did not seek to go out of the Union; and there were left uncollected about five millions of dollars, principally in the States which did not seek to go out of the Union. The sum uncollected remains a charge against these States, and, for the purposes of this letter, it may be assumed that it is a valid and enforceable charge. It is plain, however, that no legislator at this day would propose to raise revenue by a tax of that kind. There is no need of resorting to such methods. The revenue of the Government from sources not so extraordinary, and collectible by means and appliances not so objectionable as those involved herein, are ample for its purposes. They are, indeed, superabundant, and the concern of statesmen is rather how they may be reduced than how they may be increased. The Government then, needs not the money to be got by enforcing this tax.

At the same time, it is plain that to enforce it would put a grievous burden upon the people of the States which are in default in payment. It needs no array of facts to show this. Congress in one if not both branches has this session considered the proposition of large pecuniary aid to these people to help them place and keep up common schools, and the Senate has passed a bill therefor.

If there be need for that succor, there would be harm in enforcing this charge. It is to be considered, too, that while taxes are seldom looked upon with favor, this would be specially objectionable. The purpose for which it was laid can but be remembered with distaste. It can scarcely be expected that there would be cheerful aid from the State authorities in the enforcement of it. It may be doubted whether there would be any. Indeed it would, without further legislation, have to be enforced by the machinery provided by the Act under which it was laid. This would call for the appointment of numerous Federal officials, who would go among the people as obnoxious exactors. I think it must be conceded that there is, and ever will be, great reluctance to ever setting about the collection of this tax. That it never had great favor, is shown by that it was never put in force but one year. In practical effect, then, the law for it is obsolete. Why, then, should there remain this unenforced liability, a menace to the people, the enforcement of which is called for by no public need, nor by any public opinion?

In my judgment, the people and the property of the States in default should be relieved and discharged from it.

But to give such relief and discharge would be to put an equality of burden upon the States which paid, unless they in turn were in some way relieved. This the bill proposes to do by repaying to them the sums received from them. Assuming that the tax was lawful, and the collection, as far as made, was warranted, this, apart from the circumstances, would be a proposition to donate to the States surplus moneys of the United States—a proposition which I should not favor. But, as connected with the proposition to discharge from onerous and needless liability one portion of the people, it takes on a different character: it is presented as an adjustment between different bodies of the people, and is worthy of acceptance. Indeed, it would be unjust to the people of the loyal States to release the people of the once insurrectionary States from their liability without refunding to the former the sums paid by them, and there are analogies in the legislation of Congress. Acts have been passed refunding to States moneys raised by them for the raising, arming, and equipping of troops for the Army of the United States in the civil war, and for making other refunds of like character. The purpose of laying this direct tax was to aid in the ultimate payment of the extraordinary expenses of the Government caused by the civil war. The raising, arming, and equipping of troops by the States served to keep down those expenses for the time. It was a voluntary act upon the part of the States. There is no violation of principle or fundamental law in repaying to the States from the funds of the United States the cost thereof. The purpose and effect of this bill is not so unlike in nature to that as not also to be freed from the objections to a bald distribution among the States of what are called the surplus revenues of the United States.

Under the peculiar facts of the case, and as it is not likely to become a precedent for other disposals of Federal moneys, my judgment is, that the proposed measure is a good one. It is true that exactly equal justice cannot be done in carrying out the proposition of the bill. Thus, in some of the Southern States the tax was to some extent enforced. Tax sales were made of pieces of real estate in instances for less than the value of them.

Only the surplus of purchase money over the tax and charges has been available to the owners, and they have lost the difference between that and the total of the purchase money, and between the purchase money and the value.

On the other hand, in most, if not all, of the Northern States, the payment to the United States of the tax was assumed by the State Government, which collected the amount of its own people in its own tax levy. Of course, in the changes of citizenship and ownership of taxable property, while a repayment into the State Treasury will tend to reduce the amount of State tax, it will not inure to the benefit of some of those who in 1861 were taxpayers. But these failures of full and general compensation in dealing with transactions so long past must ensue, and are not to be potentially urged against proposed measures, which in the main do work equal benefit.

The Comptroller of the Treasury, Hon. William Lawrence, also recommends the passage of this bill in the following terms:

The object of these bills is to remit, so far as not collected or paid, the direct taxes laid upon and apportioned to the States, Territories, and District of Columbia under the Direct Tax Act of August 5, 1861, and to refund to such States, Territories, and District, respectively, the amount of such taxes, so far as paid in any mode whatever.

I have considered the subject with care, and now have the honor to state that, in my judgment, it is alike just, judicious, and practicable to remit all such taxes not yet collected, to refund the amounts paid in any form by any State or Territory, and to refund to private persons or their legal representatives all amounts of such tax by them paid, or collected by sale of real estate, or otherwise.

In view of the status of this tax as exhibited by these facts, your committee fully concur in the recommendations herein set out. In those cases in which the money, wherewith any State stands credited, was collected from its citizens, the amount to be returned to said State under this bill should be for the use and benefit of those citizens from whom it was collected, or their legal representatives, and your committee recommends that the bill be amended by adding the following at the end thereof: "*Provided*, that where the sums, or any part thereof, credited to any State or Territory, has been collected from the citizens thereof, either directly or by sale of property, such amount shall be regarded as received by said States in trust for the benefit of those of its citizens from whom it was collected, or their legal representatives."

Your committee recommends that the bill thus amended do pass.

Forty-eighth Congress, second session. House of Representatives. Report 2486, Part 2.

## REPAYMENT OF THE DIRECT TAX.

February 9, 1885—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. A. J. Warner, from the Committee on Claims, submitted the following as the

### VIEWS OF THE MINORITY.

[To accompany bill H. R. 6047.]

Bill No. 110, introduced by Mr. Henley of California, provides for the repayment to the several States and Territories and District of Columbia, respectively, the direct tax levied under the Act of August 5, 1861.

The bill (No. 6047) introduced by Mr. Price of Wisconsin, provides, in addition to the repayment of the several sums collected under said Act, for the payment of the fifteen per cent allowed to the States and Territories for collecting said tax, when the collection was made by States or Territories. This bill also provides for the remission of taxes apportioned, but not collected or paid. This report, therefore, is made to cover Bill 6047 as well as Bill 110.

The following statement shows the amount of direct tax apportioned to

each State and Territory, the amount paid, the amount on which fifteen per cent was allowed, and the balance due the United States under the Act of August 5, 1861, and the States and Territories from which it is due:

TREASURY DEPARTMENT, March 31, 1884.

SIR: In reply to your communication of the fourteenth instant, requesting to be furnished with a statement of the amount of taxes apportioned to the several States and Territories and the District of Columbia, under the Acts of August 5, 1861, and June 7, 1862, and the amounts still standing against said States and Territories on the books of the Department, I have the honor to transmit herewith a statement containing the information called for.

H. R. No. 110 inclosed in your letter is returned herewith.

Very respectfully,

CHAS. J. FOLGER, Secretary.

Hon. A. J. Warner, of Committee on Claims, House of Representatives.

*Statement of the condition of the Direct Tax accounts of the several States and Territories and the District of Columbia, under Acts of August 5, 1861, and June 7, 1862.*

STATE OR TERRITORY.	Amount Imposed.	Amount Paid.	Fifteen per Cent Allowance.	Balance Due United States.
Alabama.....	\$529,313 33	\$8,491 46	-----	\$520,821 27
Arkansas.....	261,886 00	184,082 18	-----	77,803 82
California.....	254,538 67	247,941 13	-----	6,597 54
Colorado.....	22,905 33	1,516 89	-----	21,388 44
Connecticut.....	308,214 00	261,981 90	\$46,232 10	-----
Dakota.....	3,241 33	-----	-----	3,241 33
Delaware.....	74,683 33	* 74,683 33	-----	-----
District of Columbia.....	49,537 33	49,437 33	-----	-----
Florida.....	77,522 67	43,529 81	-----	33,992 86
Georgia.....	584,367 33	71,407 75	-----	512,959 58
Illinois.....	1,146,551 33	974,568 63	171,982 70	-----
Indiana.....	904,875 33	769,144 08	135,731 30	-----
Iowa.....	452,088 00	384,274 80	67,813 20	-----
Kansas.....	71,743 33	71,743 33	-----	-----
Kentucky.....	713,695 33	606,641 03	107,054 30	-----
Louisiana.....	385,886 67	268,515 12	-----	117,371 55
Maine.....	420,826 00	357,702 10	63,123 90	-----
Maryland.....	436,823 33	371,299 83	65,523 50	-----
Massachusetts.....	824,581 33	700,894 14	123,687 19	-----
Michigan.....	501,763 33	426,498 83	75,264 50	-----
Minnesota.....	108,524 00	92,245 40	16,278 60	-----
Mississippi.....	413,084 67	74,742 57	-----	338,342 10
Missouri.....	761,127 33	646,958 23	114,169 10	-----
Nebraska.....	19,312 00	† 19,312 00	-----	-----
Nevada.....	4,592 67	4,592 67	-----	-----
New Hampshire.....	218,406 67	185,645 67	32,761 00	-----
New Jersey.....	450,134 00	382,614 83	67,519 17	-----
New Mexico.....	62,648 00	† 62,648 00	-----	-----
New York.....	2,603,918 67	2,213,330 86	390,587 81	-----
North Carolina.....	576,194 67	386,194 45	-----	190,000 22
Ohio.....	1,567,089 33	1,332,025 93	235,063 40	-----
Oregon.....	35,140 67	35,140 67	-----	-----
Pennsylvania.....	1,946,719 33	1,654,711 43	292,007 90	-----
Rhode Island.....	116,963 67	99,419 11	17,544 56	-----
Tennessee.....	669,498 00	287,722 06	-----	281,775 94
Texas.....	355,106 67	130,008 06	-----	225,098 61
Utah.....	26,982 00	-----	-----	26,982 00
Vermont.....	211,068 00	179,407 80	31,660 20	-----
Virginia.....	* 729,071 02	515,569 72	-----	213,501 30
West Virginia.....	* 208,479 65	181,306 93	27,172 72	-----
Washington.....	7,755 33	4,268 16	-----	3,487 17
Wisconsin.....	519,688 67	429,196 68	39,346 43	51,145 56
South Carolina.....	363,570 67	377,961 30	\$ 14,390 63	-----

\* Including \$4,350 50 on compromise.

\* Joint resolution, February 25, authorized the Secretary of the Treasury to transfer \$208,479 65 of the amount originally appropriated to Virginia to the State of West Virginia.

† Nebraska: Amount collected, \$4,281 60; amount allowed by Act August 7, 1862 (22 Stat., p. 314), \$15,030 40; total, \$19,312.

‡ New Mexico: Amount allowed by Act of July 1, 1862 (12 Stat., p. 489), \$62,648.

§ Overpaid.

TREASURY DEPARTMENT, March 29, 1884.

To aid in reaching a proper understanding of the questions involved in the bills under consideration, the following summary of the Act of August 5, 1861, and subsequent Acts relating to the imposition and collection of the direct tax, is here given.

Section 8 of the Act of August 5, 1861, provided—

That a direct tax of twenty millions of dollars be and is hereby annually laid upon the United States, and the same shall be and is hereby apportioned to the States, respectively, in manner following.

Then follow the sums apportioned to the several States, Territories, and the District of Columbia, as given above.

Section 9 of the same Act provided—

That, for the purpose of assessing the above tax and collecting the same, the President of the United States be and he is hereby authorized to divide, respectively, the States and Territories of the United States and the District of Columbia into convenient collection districts.

Section 11 provided—

That each of the assessors shall divide his district into a convenient number of assessment districts, within each of which he shall appoint one respectable freeholder to be assistant assessor.

Section 13 provided—

That the said direct tax laid by this Act shall be assessed and laid on the value of all lands and lots of ground, with their improvements and dwelling houses, which several articles subject to taxation shall be enumerated and valued by the respective assessors at the rate each of them is worth in money on the first day of April, eighteen hundred and sixty-two.

The Act also provided for equalization and apportionment to be made by a Board of Assessors.

Section 33 provided that the taxes so assessed should be and remain a lien during two years after the time it should become due and payable.

Section 35 provided for the collection of the taxes by distraint and sale of the goods, chattels, or effects of the persons delinquent.

Section 36 provided for the sale of real estate when personal property was not found to satisfy the tax and cost.

The same Act imposed an income tax of three per cent on all incomes over \$800.

Section 52 provided that if any State was in rebellion when the Act went into effect, the tax might be collected as soon as the authority of the United States was reestablished.

Section 53 provided "that any State or Territory and the District of Columbia may lawfully assume, assess, collect, and pay into the Treasury of the United States the direct tax, or its quota thereof, imposed by this Act upon the State, Territory, or the District of Columbia, in its own way and manner, by and through its own officers, assessors, and collectors;" provided notice was given "to the Secretary of the Treasury of the United States on or before the second Tuesday of February next" (1862), in which case the Act allows fifteen per cent to the State for collecting.

All the Northern States, except Delaware, accepted the collection of the direct tax. The Act of February 25, 1867, fixed the quota to West Virginia, and provided for offsetting the tax against claims of the State against the United States.

Missouri, by the Act of July 17, 1866, was authorized to offset the direct

tax against money expended in arming State troops. It has been held that without the authority of Congress no State could assume the tax after February, 1862, and Secretary McCulloch declined to allow Texas and Georgia to pay this tax to the United States without further authority of law. (See letter of Secretary McCulloch to the Governor of Texas, 1866.)

The Act of June 7, 1862, superseded the Act of August 5, 1861, so far as related to States in rebellion. (9 Wallace, 326; 14 Wallace, 553.)

Section 1 of this Act provided—

That when in any State or Territory. \* \* \* by reason of insurrection or rebellion, the civil authority of the Government of the United States is obstructed so that the provisions of the Act [of August 5, 1861 \* \* \*] for levying and collecting the direct taxes therein mentioned cannot be peaceably executed, the said direct taxes, by said Act apportioned among the several States and Territories, respectively, shall be apportioned and charged in each State and Territory, or part thereof, wherein the civil authority is thus obstructed, upon all the lands or lots of ground situate therein, respectively, except such as are exempt from taxation under the laws of said State or of the United States, as the said lands or lots of ground were enumerated and valued under the last assessment and valuation thereof made under the authority of said State or Territory previous to the first of January, Anno Domini eighteen hundred and sixty-one; and each and every parcel of the said lands, according to said valuation, is hereby declared to be, by virtue of this Act, charged with the payment of so much of the whole tax laid and apportioned by said Act upon the State or Territory wherein the same is respectively situate, as shall bear the same direct proportion to the whole amount of the direct tax apportioned to said State or Territory as the value of said parcels of land shall respectively bear to the whole valuation of the real estate in said State or Territory, according to the said assessment and valuation made under the authority of the same; and in addition thereto a penalty of fifty per centum of said tax shall be charged thereon.

By Section 2, the President was required to issue his proclamation declaring in what States and parts of States insurrection existed.

This Act also provided for Commissioners, and by Section 2, if the tax was not paid—

The title of, in, and to each and every piece or parcel of land upon which said tax has not been paid as above provided, shall thereupon become forfeited to the United States, and, upon the sale hereinafter provided for, shall vest in the United States or in the purchasers at such sale, in fee simple, free and discharged of all prior liens, incumbrances, right, title, and claim whatsoever.

The Commissioners were authorized to lease the lands, etc.

The Act of July 1, 1862, suspended the direct tax until 1865.

The Act of June 7, 1862, was modified by the Acts of February 6, 1863, and March 3, 1865.

By the Act of July 28, 1866, collection of the direct tax in the States theretofore declared to be in insurrection was suspended until January 1, 1868.

By the Act of July 23, 1868, the collection of the direct tax in the States formerly in insurrection was suspended until January 1, 1869.

The Act of June 8, 1872, provided for the restoration of lands held by the United States under the several Acts levying direct taxes, upon payment of taxes and cost.

Since the suspension of the collection by the Act of July 23, 1868, no further taxes have been collected.

#### EARLIER LEVIES OF A DIRECT TAX.

The first direct tax levied under the present Constitution was in 1798; the next in 1813, and again in 1815. The direct tax of 1798 was for \$2,000,000, the tax of 1813 was for \$3,000,000, the tax of 1815 was for \$6,000,000, the tax of 1861 was for \$20,000,000. By each of these Acts

the tax was levied "upon the United States." By "United States" is meant, of course, the people of the United States. Under these several Acts the tax was apportioned among the several States, as provided in Clause 3, Section 2, Article 1, and Clause 4, Section 9, Article 1, of the Constitution. The Act of August 2, 1813, apportioned the tax, not only among the several States, but allotted to each county in a State its proportion according to population. The direct tax of 1798, 1813, and 1815 was assessed upon "lands, dwelling-houses, and slaves" (in apportioning the taxes, according to population, five slaves were counted as three persons), and was made a lien on lands, tenements, and slaves, and, if not paid, the several Acts provided for the collection of the same by distress and sale of personal property, and, secondly, by sale of lands. The Act of August 5, 1861, levied the tax on "lands, buildings, etc." Each of the Acts referred to exempted from taxation property of the United States, and of any State. Under the several Acts, too, United States Assessors and Collectors were provided for, and provision was made for States to assume and collect, through their own machinery, and pay to the United States, the direct tax apportioned to them respectively, and fifteen per cent has been uniformly allowed to States assuming the tax for collecting it. The several Acts referred to are, therefore, substantially the same in all their important features.

The clauses in the Constitution which provide for a direct tax are as follows:

Article 1, Section 2, Clause 3:

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers.

And Clause 4, of Section 9, Article 1:

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

Section 8, Article 1, of the Constitution, provides that—

The Congress shall have power to lay and collect taxes, duties, imposts, and excises \* \* \* but all duties, imposts, and excises shall be uniform throughout the United States.

Hence, we have the two methods of laying taxes: the one under the *apportionment* clause, according to population; the other under the *uniformity* clause, which requires that "duties, imposts, and excises shall be uniform throughout the United States."

Direct taxes can be levied only under the apportionment clause of the Constitution, and it has been held that a direct tax can be levied only upon land, or as a capitation tax.

In the case of *Hylton vs. United States*, 3 Dallas, 171, Chase, J., says:

"I am inclined to think that the direct taxes contemplated by the Constitution are only two, to wit: a capitation or poll tax, and a tax on land."

And in the same case, Patterson, J., says:

Whether direct taxes, in the sense of the Constitution, comprehend any other tax than a capitation tax and a tax on land, is a questionable point.

Under the several Acts providing for a direct tax, such taxes have been levied only on land and dwellings, except that in the three earlier Acts

slaves were included. From the debates on the Act of 1861, it is clear that the opinion prevailed that a direct tax could only be levied on real estate.

Mr. Stevens said:

A direct tax, under the Constitution, is a tax upon real estate.

Mr. Bingham said:

The uniform construction has been that the power to levy and apportion direct taxes could be rightfully applied only to lands and slaves.

And again:

I undertake to say that the uniform construction of that clause of the Constitution is this—that under the head of direct taxation, as provided for in the Constitution, to be apportioned among the several States, according to the ratio of representation, there is nothing to be taxed except land, tenements, and slaves, as appurtenant to land, unless it be a direct capitation tax on the person, without respect to his property or to his income.

In the Senate, Mr. Grimes asked:

What is the direct tax on?

Mr. Collamer. On all real estate.

Mr. Grimes. Not on personal property?

Mr. Collamer. No, sir.

Mr. Grimes. I have never even known until this moment that there was no tax on personal property in these bills; but that all this is to go on real estate. \* \* \*

Mr. Collamer. I stated before, and I state now, that the bill is essentially the same in all its essential features with the bill by which a direct tax has been laid four times by the Government, lived under, and collected; and there never was a tax on personal property by this Government.

Mr. Simmons. I will explain to the Senator from Iowa, that it is competent for any State to assume its quota of this direct tax, and pay it into the Treasury with a deduction of fifteen per cent, and to take its own machinery for collecting it. If they tax personal property now in the States, they can tax personal property to get the money, under this bill, into their Treasuries; so that it will leave personal property as the States now leave it.

Not only, therefore, has it been the practice of the Government in the matter of direct taxes, to levy them directly upon the people of the States, and to limit them to real estate and slaves, but it has in every case provided the machinery for collecting directly from the people the tax so levied. In other words, the Government in levying and collecting a direct tax, as in all other taxes, acts directly upon the people, although it has in every direct tax levy provided for the assumption and payment of the tax by States. Although the tax must have been apportioned among the several States and Territories, under the apportionment clause of the Constitution, according to population, nevertheless, it has been held that States assuming to pay the tax might themselves make the levy under their own laws, and collect it by their own machinery, and this has been the practice where States have assumed the collection of the tax.

Under the Articles of Confederation Congress had no power to levy taxes, but made requisition upon the States for money. The difficulties that were encountered during and after the close of the war of the Revolution made manifest to the framers of the new Constitution that the possession of the power of taxation was necessary to the existence of any Government, and the power to levy duties, imposts, and excises—indirect taxes—was given to the General Government with the provision that these taxes should be *uniform* throughout the United States. The power to levy *direct* taxes was also given by the Constitution to the General Government, but this tax

must be apportioned according to population as determined by the census; and under decisions of the Supreme Court, and in accordance with the uniform practice of the Government, such taxes, as has been shown, have been levied only on land, or as a capitation tax.

Webster clearly states the power of the Government under the Constitution in the matter of taxes. He says:

The Constitution of the United States creates direct relations between this Government and individuals. \* \* \* It has power, also, to tax individuals in any mode and to any extent. \* \* \* The Constitution was adopted that there might be a Government which should act directly on individuals without borrowing aid from the State governments. It was to be a Government with direct powers to make laws over individuals and to lay taxes and imposts without the consent of the States.

On the other hand it has been uniformly held that the General Government cannot levy a tax on a State. The State, as a corporation, indeed, has little to levy a tax upon. And under every direct tax Act the property of the State has been exempted from the tax.

The State itself must go to the people for the means to carry on its own government. The United States, except as limited by the Constitution, has the right to go to the people of all the States for the means of supporting the General Government; and the power of the United States to levy a tax upon the people of all the States is as full and complete as the power of the States to levy taxes upon the people of the respective States. But there is no constitutional power to levy a tax upon, or to collect a tax from, a State as a corporate entity. It follows, then, that a State, as such, cannot owe taxes to the General Government, and that taxes levied upon the people of a State cannot lie as a debt against the State. Accordingly, the Act of 1861, as did all other Acts providing for direct taxes, contained provisions, not for forcing payment of the tax from the States that had assumed it, but for going back to the people of the State to collect it from them directly, if the State, after having assumed the tax, should fail to collect and pay it over to the United States.

What foundation, then, is there for the claim of a State to the payment, or repayment, of the direct tax of 1861?

It has been shown that the tax was not upon the State; that, on the contrary, the property of the State was expressly exempted. The State, as such, paid no tax. The tax was levied upon that class of persons who, in 1861-62, held real estate in the several States, and when collected by the United States Government was collected from no others. The tax was constitutional and regular. It is true that the privilege was given to the States to collect the tax and pay it over to the United States, in which case fifteen per cent was allowed for making the collection.

It must be upon this fact, if upon anything, that the claim of a State to a repayment of the tax is made to hinge. No other basis for the claim of a State, as a State, to repayment, can possibly exist.

But, if the right to a repayment of the tax is made to hinge on this point, it is as valid for a repayment of the tax of 1798, 1813, and 1815 as for that of 1861. The tax in each case was levied in the same way, and, for the most part, each time collected by the States through their own machinery, for which fifteen per cent was allowed. But do the States, because they collected the tax for the General Government, come thereby into the right to claim the tax as their own?

Some have gone so far as to speak of these taxes as a "forced loan." But they who use such language use it without comprehending its meaning. As well might a Sheriff who collects taxes for the Treasury of a county or



State, for which he is allowed a percentage, set up a claim to the taxes as his own, and demand them back from the County or State Treasurer on the plea that the money he paid over was a "forced loan."

Admitting, as it must be admitted, that the direct tax was constitutional and regular, that it was levied upon and paid by the people of the States, either directly to officers of the United States, or through officers of the States, it would seem impossible to come to any other conclusion than that there is no foundation whatever for the claim of a State to the repayment of this tax. The tax, as has been shown, was not levied upon the State—it could not be—nor could it be collected from a State. It was a tax upon individuals as much as any other tax is, and a State would have just as good reason for claiming a right to any other tax paid by its citizens, whether a direct tax, an income tax, or an excise tax under the internal revenue laws, as to this particular tax.

But suppose this bill should pass, out of what fund would the direct tax be repaid to the States? The Government has no resources of its own. It must go to the people for the money. It might levy another direct tax, or it might impose some indirect tax; but in the end the people must pay it. The idea that there is a great surplus in the Treasury, out of which it can be paid without any tax, is not sustained. The interest-bearing debt of the Government is \$1,200,000,000, of which nearly \$200,000,000 is payable at the option of the Government, and if money in the Treasury is directed to other uses, taxes must be levied to pay the debt; so in the end all comes from taxes. No State could therefore expect to receive more than, in some way or other, it would have to pay. Besides, it costs something to collect money into the Treasury and pay it out again. The Government allowed fifteen per cent to such States as assumed the collection of the tax for collecting it; and it is proposed to pay to the States this fifteen per cent as well as the amount actually received by the Government. To collect anew the \$20,000,000 of direct tax, or so much of it as was in the first instance collected, would cost, perhaps, fifteen per cent again, and by the time it was all paid out the actual cost of collecting the money and adjusting all the claims arising under it would hardly be less than twenty-five per cent. In other words, the direct tax can only be paid by new taxes, to collect and pay over which twenty-five per cent must be paid to officials, agents, clerks, etc. To get, therefore, the \$1,500,000 direct tax paid by Ohio, the people of Ohio would have to pay anew, in some way or other, probably not less than \$2,000,000, one fourth of it to be expended in working the machinery necessary to collect and pay out the money, especially if the repayment is to extend to the individual citizens who in the first instance paid it; and what would be true of Ohio would be true of every other State. They would all pay in the end \$1 25 for every \$1 that would reach the people again, if the repayment is to extend to the people who in the first instance paid it, as it plainly should if repaid at all.

The next question is, if a State cannot lay claim to the tax levied under the Act of August 5, 1861, have individuals, who paid the tax, a better right? They no doubt have a better right, for the State, in its corporate capacity, it is believed, has none at all. The first question, however, that arises is, was the tax, as it related to individuals, constitutional? Was it lawfully levied and collected? That it was not an equal tax is admitted. No direct tax levied under the apportionment clause of the Constitution is an equal tax, but it is, nevertheless, one of the modes of levying taxes expressly provided for by the Constitution. That this tax was levied under the apportionment clause, instead of under the uniformity clause, does not of itself give those who paid it a right to demand it back. So far as the

tax was paid by individuals directly to officers of the Government, it was paid by that class who in 1861-'62 (or when it was collected) owned "lands and dwellings" upon which the tax was levied. No other classes paid this tax, and certainly no other class can have any claim whatever to any part of it now, even if it should be repaid. And for this reason a State which left the tax to be paid by its individual citizens owning property liable for the tax is without a shadow of right to it. And in this connection it may be stated that the provision in the Act of August 5, 1861, not having been reenacted in the Act of June 7, 1862, the direct tax could not after the latter date be assumed by a State. In the Georgia case the First Comptroller, Mr. A. G. Porter, decided that the citizens of the State owed the tax to the Government, and not the State, and consequently that money due by the United States to the State of Georgia could not be credited "as upon a debt owing by that State to the United States."

The hardship in the collection of this tax comes in where lands were taken possession of in insurrectionary States and sold. In many cases the lands sold far below their ordinary value, their owners being away from them, or under the circumstances not possessing at the time the means of paying the taxes or of subsequently redeeming the lands.

In some States a portion only of the taxes was collected in this way, the collection being generally limited to districts within the military lines of the United States.

The injustice here consists in the taxes having been collected from one part of the people, and not from all alike. But, after all, this is one of the exigencies of the war, and, like a thousand other things, could not be controlled at the time, and can not now be remedied without creating new wrongs. It must be admitted, however, that the claim to repayment of the taxes to the individuals who paid them rests upon a much better foundation than the claim of a State. But the difficulty lies in the impracticability of repayment to individuals who might be entitled to it. While this might not be so difficult in those States where individuals paid the tax directly to the United States Commissioners, or where lands were sold for the tax in other States, where the tax was collected by the State through its own machinery, the repayment to individuals in the proportions it was paid by them would be extremely difficult if not impossible, and certainly would involve a vast deal of labor. There can be no question as to the right of individual owners of lands sold for the direct tax to a repayment of the excess of sales or excess of proceeds of resales over and above taxes, costs, etc. Thus the Government realized on resales of land bought in for taxes in the State of South Carolina some \$300,000 over and above taxes and costs. As the object of these purchases and sales was to get the tax, and not confiscation, it is difficult to find a reason for not paying the surplus back to the original owners of these lands.

The only question that remains to be considered is, shall the Government proceed to collect the tax in States where the full tax has not been collected? Under the original Act of June 5, 1861, the tax was made a lien upon lands and buildings upon which it was assessed for two years, and it is assumed that if the Government should proceed now to collect the tax, it could collect it only from those owning the property liable for the tax at the time it was levied, or before the lien upon it expired. The Government having failed to collect the tax at the time, no matter for what reason, it cannot proceed now to collect it from any other class than that particular class upon whom the tax was originally laid. A new apportionment cannot be made. The census has been twice taken since levying this tax, and a new apportionment would necessarily be very dif-

ferent from the apportionment under the Act of 1861. Consequently the collection of this tax now has become altogether impracticable, and, in part at least, impossible. Would it not be as well, then, to recognize the fact that this country from 1861 to 1865 was in a state of war, and that in parts of the States taxes of any kind were not and could not be collected; that during this time neither the direct tax nor the income tax nor any other United States tax was collected, and could not be collected in a large part of the territory of the United States; that it is impossible at this late day to go back over all these accounts and open them up anew, and expect to mete out even-handed justice the same as though there had been no war? We cannot now collect the income tax or the internal revenue tax that was not paid in those years, and these taxes were many times larger than the direct tax. We could not now collect any of these taxes that were not paid, and we could not collect the full direct tax if it were undertaken.

It is therefore recommended that all direct tax laws be repealed, and that the bills referred to be laid on the table.

It may not be out of place to refer here to a suggestion made by the late Secretary of the Treasury, Mr. Folger, in a communication printed as a part of this report, that in the adjustment of the direct tax of 1861 an account should be taken of the surplus distributed under the law of 1836. The fourth installment of the sum which the Act of 1836 authorized to be distributed among the States accepting it was never paid, and claims have been recently preferred by certain States for this fourth installment. It is claimed on the one hand that the acceptance by the States which shared in the distribution under the Act of 1836 amounted to a contract which bound the Government to pay over the full sum of \$37,468,859 embraced in the Act. But, on the other hand, one condition of the Act was "that when said money or any part thereof shall be wanted by the said Secretary to meet appropriations by law, the same shall be called for, in ratable proportions, within one year, as nearly as conveniently may be, from the different States with which the same is deposited."

This surplus, distributed under the Act of 1836, was shared in by twenty-six States. It had been collected from the people of these States. There was no great inequality probably in the payment or distribution of this surplus, but now to collect the nine or ten millions claimed to be due to the twenty-six States from the people of the whole country and pay it over to those States would be manifestly unjust. If it be as important as it is claimed to be to square the accounts between these twenty-six States and the United States, it is suggested that an easy and just way to do it would be to call in the *first* installment and with that pay the *fourth* installment. There can surely be no question as to the right of the Government to call for any or all of the distributed surplus.

The barest consideration of these claims shows how difficult it is to go back and open up these accounts with a view to a more equitable settlement than has been made. It is a question whether in attempting it greater injustice would not be done than would exist if they were let alone.

In order to show the condition of the claims arising under the Act of 1836, the opinion of Justice Harlan on petition of Virginia for mandamus (Supreme Court, October term, 1883) is printed in connection with the communication of the late Secretary.

Communications from the First Comptroller, Hon. William Lawrence, and from the late Secretary, the Hon. Charles J. Folger, containing certain recommendations, are herewith submitted as a part of this report, and also

the opinion of Mr. Justice Harlan on the surplus distributed under the law of 1836. It will be seen that the recommendations of the late Secretary and of the First Comptroller are not altogether in harmony with the recommendations here submitted.

A. J. WARNER.  
BENTON McMILLAN.  
CHAS. B. LORE.

TREASURY DEPARTMENT, June 14, 1884.

SIR: I have the honor of acknowledging receipt from you of H. R. Bill No. 110, entitled "A Bill to adjust certain accounts between the United States and the several States and Territories and the District of Columbia."

This bill relates to the direct tax of \$20,000,000 annually laid upon the United States, and apportioned to the States, the Territories, and the District of Columbia under the Act of Congress passed August 5, 1861 (12 Stat. at Large, p. 294). The purpose of the bill is to relieve and discharge from further liability for that tax those States and Territories which have not paid the portion thereof apportioned to them respectively, and to repay, out of any money in the Treasury not otherwise appropriated, to those States and Territories which have paid any portion, the sums by them respectively paid. Though by the Act above cited this tax was made an annual one, an attempt to collect it for more than one year has never been made. By that attempt there were collected about \$15,000,000, principally from the States which did not seek to go out of the Union, and there were left uncollected about \$5,000,000, principally in the States which did seek to go out of the Union. The sum uncollected remains a charge against those States, and for the purposes of this letter it may be assumed that it is a valid and enforceable charge. It is plain, however, that no legislator at this day would propose to raise revenue by a tax of that kind. There is no need of resorting to such method. The revenues of the Government, from sources not so extraordinary, and collectible by means and appliances not so objectionable as those involved therein, are ample for its purposes. They are, indeed, superabundant, and the concern of statesmen is rather how they may be reduced than how they may be increased. The Government, then, needs not the money to be got by enforcing this tax. At the same time it is plain that to enforce it would put a grievous burden upon the people of the States which are in default in payment. It needs no array of facts to show this. Congress, in one, if not both branches, has this session considered the proposition of large pecuniary aid to these people, to help them place and keep up common schools, and the Senate has passed a bill therefor. If there be need for that succor, there would be harm in enforcing this charge. It is to be considered, too, that while taxes are seldom looked upon with favor, this would be specially objectionable. The purpose for which it was laid can but be remembered with distaste. It can scarcely be expected that there would be cheerful aid from the State authorities in the enforcement of it. It may be doubted whether there would be any. Indeed, it would, without further legislation, have to be enforced by the machinery provided by the Act under which it was laid. This would call for the appointment of numerous Federal officials, who would go among the people as obnoxious exactors. I think it must be conceded that there is, and ever will be, great reluctance to ever setting about the collection of this tax. That it never had great favor is shown by the fact that it was never put in force but one year. In practical effect, then, the law for it is obsolete. Why, then, should there remain this unenforced liability, a menace to the people, the enforcement of which is called for by no public need, nor by any public opinion?

In my judgment, the people and the property of the States in default should be relieved and discharged from it.

But to give such relief and discharge would be to put an inequality of burden upon the States which paid, unless they in turn were in some way relieved. This the bill proposes to do by repaying to them the sums received from them. Assuming that the tax was lawful, and the collection as far as made was warranted, this, apart from the circumstances, would be a proposition to donate to the State surplus moneys of the United States, a proposition which I should not favor. But as connected with the proposition to discharge from onerous and needless liability one portion of the people, it takes on a different character; it is presented as an adjustment between different bodies of the people, and is worthy of acceptance. Indeed, it would be unjust to the people of the loyal States to release the people of the once insurrectionary States from their liability, without refunding to the former the sums paid by them, and there are analogies in the legislation of Congress. Acts have been passed, refunding to States moneys raised by them for the raising, arming, and equipping of troops for the army of the United States in the civil war; and for making other refunds of like character. The purpose of laying this direct tax was to aid in the ultimate payment of the extraordinary expenses of the Government caused by the civil war. The raising, arming, and equipping of troops by the States served to keep down those expenses for the time. It was a voluntary act upon the part of the States. There is no violation of principle or fundamental law in repaying to the States from the funds of the United States the cost thereof. The purpose and effect of this bill is not so unlike in nature to that, as not also to be freed from the objec-

tions to a bald distribution among the States of what are called the surplus revenues of the United States.

Under the peculiar facts of the case, and as it is not likely to become a precedent for other disposals of Federal moneys, my judgment is that the proposed measure is a good one. It is true that exactly equal justice cannot be done in carrying out the proposition of the bill. Thus, in some of the Southern States, the tax was to some extent enforced. Tax sales were made of pieces of real estate, in instances, for less than the value of them. Only the surplus of purchase money over the tax and charges has been available to the owners, and they have lost the difference between that and the total of the purchase money, and between the purchase money and the real value. On the other hand, in most, if not all, of the Northern States, the payment to the United States of the tax was assumed by the State Government, which collected the amount of its own people in its own tax levy. Of course, in the changes of citizenship and of ownership of taxable property, while a repayment into the State Treasury will tend to reduce the amount of State tax, it will not enure to the benefit of some of those who, in 1861, were taxpayers. But these failures of full and general compensation in dealing with transactions so long past must ensue, and are not to be potentially urged against proposed measures which, in the main, do work equal benefit.

It is worthy of consideration, too, whether this is not a suitable occasion to deal with the matter of the Federal surplus moneys deposited, or to be deposited, with the States by the Act of 1836 (5 Stat. at Large, 55-207). Why may not those States which made payment of their portion of the direct tax under the Act of 1861 be debited in the settlement proposed by the bill before your committee with the amount of that deposit made with them, and be paid the balance, and thus the liability to the United States under the Deposit Act be extinguished? Thus the anomalous state of things existing under the last named Act would be ended so far as those States are concerned.

It is true that some of the States, as Virginia and Arkansas, for instance, may not have received their full proportion of the Deposit Fund of 1836, and it is true that in remitting the liability of the States to repay the deposit with them there will, as to some of them, be no claim for a refund under this bill against which that liability may be set off, and that therefore complete equality of benefit and burden may not be realized. It is well to consider, however, whether, inasmuch as it is desirable that the relation of creditor and debtor between the United States and the States be closed, it should not be done at this favorable opportunity, though at the sacrifice of complete equality. In connection herewith, I refer to the fifty-third section of the Direct Tax Act (see 12 Stat. at Large, pp. 311, 312), and suggest that there may be instances in which the principal of that section may be applied.

I also inclose herewith a communication to me from the First Comptroller of the Treasury, which presents views in accord with some of those expressed by me, and gives tables of value, and a draft of a bill; and to this communication I ask attention.

Very respectfully,

CHAS. J. FOLGER, Secretary.

Hon. A. J. Warner, Chairman of Sub-Committee of Committee on Claims, House of Representatives.

TREASURY DEPARTMENT, FIRST COMPTROLLER'S OFFICE, }  
WASHINGTON, D. C., May 2, 1884. }

SIR: I have the honor to state that I have received a letter from the Honorable Wade Hampton, of the Senate of the United States, dated twenty-fourth ultimo, transmitting to me a copy of Senate Bill No. 795, "to adjust certain accounts between the United States and the several States and Territories and the District of Columbia," and asking me to give my views on it. I have also received a letter, dated twenty-fifth ultimo, from the Hon. Barclay Henley, of the House of Representatives, transmitting a copy of House Bill No. 110, which is in form similar to said Senate bill. This latter letter is addressed to you and to me jointly, and asks "to be furnished with the views" of the Treasury Department, and with mine also in relation thereto.

The object of these bills is to remit, so far as not collected or paid, the direct taxes laid upon and apportioned to the States, Territories, and District of Columbia, under the Direct Tax Act of August 5, 1861, and to refund to such States, Territories, and District, respectively, the amount of such taxes so far as paid in any mode whatever.

I have considered this subject with care, and now have the honor to state that, in my judgment, it is alike just, judicious, and practicable to remit all such taxes not yet collected, to refund the amounts paid in any form by any State or Territory, and to refund to private persons, or their legal representatives, all amounts of such tax by them paid, or collected by sale of real estate or otherwise. I have accordingly prepared the draft of a bill to effect these objects, which I have the honor to submit for your consideration.

I will briefly state some of the reasons in support of the views above presented: The amounts apportioned to States which have not in any form paid, or been credited with any sum, as the accounts stand in this office, are as follows:

Alabama	-----	\$529,313	33
Arkansas	-----	261,886	00
Dakota	-----	3,241	33
Florida	-----	77,522	67
Georgia	-----	584,367	33
Louisiana	-----	385,886	67
Mississippi	-----	413,084	67
New Mexico	-----	62,648	00
North Carolina	-----	576,194	67
South Carolina	-----	363,570	67
Tennessee	-----	669,498	00
Texas	-----	355,106	67
Utah	-----	26,982	00
			\$4,309,302 01
Virginia	-----	\$937,550	67
Less	-----	208,479	65
			729,071 02
Total	-----		\$5,038,373 03

These are the sums charged against the States and Territories mentioned, all of which, as stated, appear by the records of this office as unpaid. It is proper to say, however, as to all these, except Alabama, Dakota, New Mexico, and Utah, that payments for each have been made into the Treasury by direct tax Commissioners, which have not been settled in this office. Most of these payments are shown in the letter of the Commissioner of Internal Revenue, appended to the Georgia case (4 Lawrence, Compt. Dec., 380). So, to a limited extent, other payments have been made, but not yet credited.

I. As to the amounts thus apportioned, and which remain unpaid, only three things can be done. (1) They can be paid by an increase of taxes in these States, if they should respectively assume payment, or (2) they can be paid by enforcing collection by Act of Congress of assessments against the real estate of private owners thereof, or (3) they can be left uncollected.

(1) It is certainly well understood that the burdens of taxation, under State and local authority in these States, is such that it cannot be desirable to increase it. It is not at all certain that these States would increase and collect taxes for this purpose. With the general feeling which now so fortunately prevails in favor of Congressional aid to States to promote common school education, it is quite evident that Congress will not require any such taxes to be levied. There is no necessity now for requiring the payment of these amounts. The revenues of the Government are more than abundant; and it is not at all probable that conditions will ever exist to require the payment of these amounts.

(2) The same reasons operate against enforced collections under the authority of an Act of Congress. In fact, it is believed that there is no desire now on the part of any class of citizens that the payment of this tax should be enforced. This, in part, grows out of the consideration having almost universal assent, that direct taxes are unequal, and hence unjust. The apportionment against States is made on the basis of population, and not wealth, and is, hence, unequal as between States. When collection is enforced by authority of Congress against real estate, the inequality and injustice are aggravated, because the burden is imposed on a species of property generally less productive of profit than any other, and hence least able to bear it, and chattel wealth, including a vast amount of corporate resources, constituting in all a large proportion of the aggregate of all forms of property, totally escapes from all burden, while requiring and receiving more of the protecting care of Government, and hence reaping benefits at the expense of the owners of real estate. The objectionable character of direct taxes is shown by the fact that they have been authorized but three times since the adoption of the Constitution; and although the Act of August 5, 1861 (12 Stat., 294), provided "that a direct tax of twenty millions of dollars be and is annually laid upon the United States," yet the purpose to collect all beyond one year has been abandoned. It may, then, be assumed that the direct taxes collected were unequal and unjust, as between the States, and still more so among the property owners of the United States.

A wrong having thus been done, it should be repaired by remitting the taxes not collected, and refunding those collected, upon the same principle sanctioned in many statutes of remitting taxes improperly assessed, and of refunding those which have been improperly collected.

(3) The result will undoubtedly be that the amounts of direct tax not yet paid will remain unpaid.

II. In view of all this, the inquiry is now presented, whether anything, and, if so, what should be done as to (1) the States which have assumed and paid their respective quotas of the direct tax, and (2) as to those in which sums allowed by accounting officers in their favor, respectively, have been withheld and credited on account of the quota of such States.

It seems to me advisable to refund to such States the amount so assumed and paid or withheld. This view is supported by all the considerations already mentioned, which show the inexpediency of enforcing payment in the States the quotas of which have not been paid. The policy of refunding is supported by the manifest injustice of retaining money collected as direct taxes from some States from which others are exempt. Equality

of burdens, as among the States, in those cases in which they are imposed in fixed proportions directly upon the real estate therein, is simple justice. In such cases inequality is injustice. Assuming that no more of the direct tax should be collected, the only mode of securing equality is to refund the direct taxes collected. If this refund should be made, States would receive money, substantially, as follows:

STATES AND TERRITORIES.	Amount.	STATES AND TERRITORIES.	Amount.
Alabama .....	\$8,491 46	Missouri .....	\$761,127 33
Arkansas .....	184,082 18	Nebraska .....	19,312 00
California .....	247,941 13	Nevada .....	4,592 67
Colorado .....	1,516 89	New Hampshire .....	218,406 67
Connecticut .....	308,214 00	New Jersey .....	450,134 00
Delaware .....	74,683 33	New Mexico .....	62,648 00
District of Columbia .....	49,437 33	New York .....	2,603,913 67
Florida .....	43,529 81	North Carolina .....	386,194 45
Georgia .....	71,407 75	Ohio .....	1,567,089 33
Illinois .....	1,146,551 33	Oregon .....	35,140 67
Indiana .....	904,875 33	Pennsylvania .....	1,946,719 33
Iowa .....	452,088 00	Rhode Island .....	116,963 67
Kansas .....	71,743 33	Tennessee .....	387,722 06
Kentucky .....	713,695 33	Texas .....	130,008 06
Louisiana .....	268,615 12	Vermont .....	211,068 00
Maine .....	420,826 00	Virginia .....	515,569 22
Maryland .....	436,823 33	West Virginia .....	208,479 65
Massachusetts .....	824,581 33	Washington Territory .....	4,268 16
Michigan .....	501,763 33	Wisconsin .....	468,543 11
Minnesota .....	108,524 00	South Carolina .....	377,961 30
Mississippi .....	74,742 00		

Tables showing the condition of the direct tax accounts with several States and Territories will be found appended to the Georgia case (4 Lawrence, Compt. Dec., 376, 380). The first table shows the accounts as they stand adjusted in this office. The second table shows some payments not yet adjusted in this office, and hence the apparent discrepancy between the tables. There are still other credits, to a limited extent, as to some States, not shown by either of these tables.

III. In some of the States the Tax Commissioners, under the direct tax of June 7, 1862 (12 Stat., 422), sold the real estate of many private owners, and thus collected in part the quota of tax apportioned to such States, respectively. The Senate and House bills submitted for my consideration propose to refund directly to the State the taxes thus collected in each State. It is submitted that it would seem more equitable and just to refund directly to the private parties who paid such taxes, or whose lands were sold to enforce payment. This is the policy established as to the "surplus proceeds" arising from sales, "after satisfying the tax, costs, charges, and commissions." Act August 5, 1861 (12 Stat., 304, Sec. 36); Act June 7, 1862 (12 Stat., 422); Act June 8, 1872 (17 Stat., 382); Act March 3, 1883 (22 Stat., 595). It is not perceived that any State can have any claim to a refund of money paid by its citizens. It is believed the draft of a bill herewith submitted may be made the basis of a judicious mode of disposing of the subject to which it applies. The last clause of Section 2 of the bill is added by reason of the undoubted rule of law learnedly discussed and clearly stated by the Supreme Court in *United States vs. Ross*, 92 U. S., 284.

I append hereto a table showing, with substantial accuracy, the amounts of taxes remaining uncollected in several States and Territories, and which it is proposed to remit, and the amounts which it is proposed to refund to the several States and Territories.

I have the honor to be, very respectfully,

WILLIAM LAWRENCE, Comptroller.

Hon Charles J. Folger, Secretary of the Treasury.

#### A BILL.

*Be it enacted, etc.*, That the Secretary of the Treasury be and is authorized and required (1) to repay to the proper officer of each State the amount paid by such State for direct taxes laid upon and apportioned to it as a direct tax, under the Direct Tax Act of August 5, 1861; and (2) to pay to the proper officer of any such State any and all sums allowed by the accounting officers of the Treasury Department as due to it, but withheld and credited on account of such direct tax; and (3) to place to the credit of the Commissioners of the District of Columbia, in the Treasury of the United States, a sum equal to the amount paid by or collected from said District on account of said direct tax; and (4) to cause to be audited by the proper accounting officers of the Treasury Department, and paid to the original legal owner or owners of every lot or parcel of land sold for non-payment of such taxes, or to his or their legal representatives, the amount paid at such

sales, or otherwise collected, after deducting the cost thereof, including charges and commissions not otherwise paid.

And all such taxes laid upon any State, but not paid, are hereby remitted, and the charges made against such State therefor are canceled. All accounts with any State shall be so adjusted that taxes not collected are remitted and amounts paid shall be refunded. And a sufficient sum of money is appropriated out of any money in the Treasury not otherwise appropriated to make the payments herein authorized. The word "State" herein shall include "Territory" and the District of Columbia, so far as necessary to effect the objects of this Act.

Sec. 2. In making payments as aforesaid to the original legal owner or owners, or their legal representatives, of any lot or land sold for non-payment of direct taxes, and for refunding of the surplus proceeds of such sales as now authorized (Act August 5, 1861, 12 Stat., 304, Sec. 36), and for refunding moneys collected or repaying money withheld, evidence of payment to any officer authorized to receive it shall be deemed a payment into the Treasury of the United States.

*Supreme Court of the United States.*

No. 16 (original), October term, 1883.

(*Ex parte*: In the matter of the Commonwealth of Virginia, petitioner. Petition for mandamus. March 17, 1884.)

Mr. Justice Harlan delivered the opinion of the Court:

This is an application for a writ of mandamus directed to the Secretary of the Treasury, commanding him to deliver to the proper officer of the Commonwealth of Virginia the sum of \$732,809 33, that being, it is claimed, the amount of the fourth installment of public money of the United States required by the Act of Congress approved June 23, 1836, to be deposited with that State upon the terms and conditions therein prescribed.

The thirteenth and fourteenth sections of that Act—the only parts thereof material to the present inquiry—are as follows:

"Sec. 13. *And be it further enacted*, That the money which shall be in the Treasury of the United States on the first day of January, 1837, reserving the sum of \$5,000,000, shall be deposited with such of the several States, in proportion to their respective representation in the Senate and House of Representatives of the United States, as shall, by law, authorize their Treasurers, or other competent authorities, to receive the same on the terms hereinafter specified; and the Secretary of the Treasury shall deliver the same to such Treasurers or other competent authorities, on receiving certificates of deposit therefor, signed by such competent authorities, in such form as may be prescribed by the Secretary aforesaid, which certificates shall express the usual and legal obligations, and pledge the faith of the State for the safe keeping and repayment thereof, and shall pledge the faith of the States receiving the same to pay the said moneys, and every part thereof, from time to time, whenever the same shall be required by the Secretary of the Treasury for the purpose of defraying any wants of the public Treasury beyond the amount of the five millions aforesaid; *provided*, that if any State declines to receive its proportion of the surplus aforesaid, on the terms before named, the same shall be deposited with the other States agreeing to accept the same on deposit, in the proportion aforesaid; *and provided further*, that when said money, or any part thereof, shall be wanted by the said Secretary to meet appropriations by law, the same shall be called for, in ratable proportions, within one year, as nearly as conveniently may be, from the different States with which the same is deposited, and shall not be called for in sums exceeding ten thousand dollars from any one State, in any one month, without previous notice of thirty days for every additional sum of twenty thousand dollars which may at any time be required.

"Sec. 14. *And be it further enacted*, That the said deposits shall be made with said States in the following proportions, and at the following times, to wit, one quarter part on the first day of January, 1837, or as soon thereafter as may be; one quarter part on the first day of April, one quarter part on the first day of July, and one quarter part on the first day of October, all in the same year." (5 Stat., 55.)

On the twentieth of December, 1836, Virginia, by legislative enactment, signified her acceptance of the terms and conditions of this Act, of which due notice was given to the Secretary of the Treasury and to Congress.

On the first day of January, 1837, as appears from a letter of the Secretary of the Treasury to the Speaker of the House of Representatives, under date of January 3, 1837, the balance in the Treasury—in excess of \$5,000,000—subject to be deposited with the States, was \$37,468,859 97, of which Virginia would have been entitled, under the Act of June 23, 1836, to the sum of \$2,931,237 34, payable in four installments. (*Ex. Doc.*, second session Twenty-fourth Congress, vol. 2, Doc. No. 62.) The first three installments were deposited with the States at the respective dates fixed in the Act of Congress, but no part of the fourth has ever been delivered. The reason why the last installment was not deposited on the first of October, 1837, is shown by the message of President Van Buren to Congress, at its extra session in September of that year. He said: "There are now in the Treasury \$9,367,214, directed by the Act of the twenty-third of June, 1836, to be deposited with the States in October next. This sum, if so deposited, will be subject, under the law, to be recalled, if needed, to defray existing appropriations; and, as it is now evident that

the whole, or the principal part of it, will be wanted for that purpose, it appears most proper that the deposits should be withheld." (Cong. Globe and Appendix, vol. 5, p. 8, first session Twenty-fifth Congress.)

The Secretary of the Treasury, in his report to Congress at the same session, after alluding to the then disturbed condition of the finances, and to the fourth installment, payable in October, 1837, suggested that, in view of the condition of the finances, "and the importance of meeting with efficiency and good faith all the obligations of the Government to the public creditors, it would be most judicious to apply the whole installment, as fast as it is wanted and can be collected, to the prompt discharge of these obligations, and that the last deposit with the States, not being a debt, but a mere temporary disposal of a surplus, should be postponed until Congress, in some different state of the finances, when such an available surplus may exist, shall see a manifest propriety and ability in completing the deposits, and shall give directions to that effect." (Ex. Doc. and Reports of Committees, first session Twenty-fifth Congress, Doc. No. 2.)

By an Act of Congress approved October 2, 1837, it was provided "that the transfer of the fourth installment of deposit directed to be made with the States under the thirteenth section of the Act of June 23, 1836, be and the same is hereby postponed until the first day of January, 1839; *provided*, that the three first installments under the said Act shall remain on deposit with the States until otherwise directed by Congress." (5 Stat., 201.)

But on the first day of January, 1839, there was not, as the petition admits, in the Treasury a sufficient amount to meet that installment after paying existing appropriations for the current expenses of the Government. And by the third section of an Act approved August 13, 1841, the entire Act of June 23, 1836, excepting its thirteenth and fourteenth sections, was repealed. (5 Stat., 440.)

The petition concedes that at no time since January 1, 1841, until within the past few years, has there been in the Treasury a surplus of money large enough, after defraying existing charges imposed by Congress, to make the fourth installment of deposit.

It is, however, alleged that there is now in the Treasury of the United States a sufficient sum of money, after defraying all the existing charges imposed by Congress upon the Treasury, and not needed or wanted by the Secretary to meet appropriations by law, or to meet the interest accruing upon the public debt, or to meet all the expenditures of the Government, estimated or ascertained by him for the present fiscal year, to make the deposits of the fourth installment with all of the States with which said deposits were directed to be made.

The present Secretary of the Treasury having refused, upon the demand of Virginia, by its duly authorized agent, to use any part of the public moneys for the purpose of meeting that installment, the present application has been made for a mandamus compelling him to deposit with that State an amount equal to one fourth of the said sum of \$2,931,237 32.

No case is made for a mandamus. If it was the duty of the Secretary of the Treasury, in execution of the Act of 1836, to make the fourth installment of deposit on the day fixed in that Act, whatever may have been on that day the wants of the public Treasury, his failure to do so was legalized by the Act of October 2, 1837, postponing that deposit until January 1, 1839. Of the latter Act the States could not complain, because that of January 23, 1836, created no debt or legal obligation upon the part of the Government, but only made the States the depositaries, temporarily, of a portion of the public revenue not needed, as was then supposed, for the purposes of the United States.

What was the duty of the Secretary on January 1, 1839, to which time, by the Act of 1837, the deposit of the fourth installment was postponed? It is conceded that there was not in the Treasury on January 1, 1839, a sufficient amount available and applicable to public purposes, after paying necessary appropriations for the expenses of the Government, to meet that installment. He could not, therefore, do what he might then lawfully have done, had the Treasury, on January 1, 1839, been in the condition contemplated by Congress when the Act of 1837 was passed. The last direction given by the legislative department upon the subject of this installment is found in the latter Act. No authority has been conferred upon the Secretary, by subsequent legislation, to use any surplus revenue accruing after January 1, 1839, for the purpose of meeting the fourth installment of deposit. Congress, by the original Act, as we have seen, charged the payment of the several installments upon the revenue, above \$5,000,000, which might be in the Treasury on January 1, 1837. That charge was transferred to and imposed upon the surplus revenue in the Treasury on January 1, 1839. But no such charge has been imposed upon the revenue accruing subsequently to the latter date.

Congress has permitted the thirteenth and fourteenth sections of the Act of 1836, as modified by the Act of October 2, 1837, to stand, for the purpose, as we infer, of showing not only the terms upon which the States received the first three installments of deposit, but that those installments are held by the States, subject to be recalled in the discretion of the United States.

But the legislative department of the Government seems purposely to have refrained from making the fourth installment of deposit a charge directly upon any revenues accruing since January 1, 1839. Since the last direction given by Congress upon the subject, the financial necessities and obligations of the Government have been largely increased, and this circumstance, perhaps, suggests the reason why the legislative department has not fixed any day for the final execution of the Act of 1836. Be the reason what it may, we are of opinion that the Secretary of the Treasury has no authority under existing legislation, and without further direction from Congress, to use the surplus revenue in the

Treasury, from whatever source derived, or whenever, since January 1, 1839, it may have accrued, for the purpose of making the fourth installment of the deposit required by the Act of 1836.

The petition for a mandamus must, consequently, be denied.  
It is so ordered.

*The Fourth Installment claimed to be due under the Act of June 23, 1836.*

NAME OF THE STATE.	Date of Acts of Acceptance by States.	Fourth Installment Due.
Maine .....	January 26, 1837 .....	\$318,612 75
New Hampshire .....	January 11, 1837 .....	223,028 93
Massachusetts .....	January 19, 1837 .....	446,057 86
Vermont .....	November 17, 1836 .....	223,028 93
Connecticut .....	December 29, 1836 .....	254,890 20
Rhode Island .....	November 10, 1836 .....	127,445 10
New York .....	January 10, 1837 .....	1,338,173 57
New Jersey .....	November 4, 1836 .....	254,890 20
Pennsylvania .....	December 22, 1836 .....	955,838 26
Delaware .....	January 16, 1837 .....	95,583 83
Maryland .....	December 30, 1836 .....	318,612 75
Virginia .....	December 20, 1836 .....	732,809 33
North Carolina .....	January 11, 1837 .....	477,919 13
South Carolina .....	December 21, 1836 .....	350,474 03
Georgia .....	December 26, 1836 .....	350,474 03
Alabama .....	December 16, 1836 .....	223,028 93
Louisiana .....	February 7, 1837 .....	159,306 38
Mississippi .....	March 13, 1837 .....	
Tennessee .....	May 2, 1837 .....	127,445 10
Kentucky .....	October 29, 1836 .....	477,919 13
Ohio .....	December 16, 1836 .....	477,919 13
Missouri .....	December 19, 1836 .....	669,086 78
Indiana .....	December 29, 1836 .....	127,445 10
Illinois .....	December 21, 1836 .....	286,751 48
Michigan .....	December 17, 1836 .....	159,306 38
Arkansas .....	July 22, 1836 .....	95,583 83
.....	October 29, 1836 .....	95,583 83
Total amount due all of said States .....	.....	\$9,367,214 97

*Letter of the First Comptroller of the Treasury respecting the direct tax collected in South Carolina.*

TREASURY DEPARTMENT, FIRST COMPTROLLER'S OFFICE, }  
WASHINGTON, D. C., February 14, 1885.

SIR: I have the honor to acknowledge the receipt of your letter of the ninth instant, relative to the direct tax account of the State of South Carolina.

As you state, the quota of South Carolina was \$363,570 67; of which \$152,781 35 was collected, leaving uncollected taxes aggregating \$210,789 32. But no account with the State for her said quota has yet been adjusted.

The account to which you refer, was with the Direct Tax Commissioners for South Carolina, who had been debited, not only with the State quota of taxes, but with penalties, interest, costs, proceeds of sales of land, proceeds of redemption of land, resale and rent of land, and other miscellaneous collections, and credited with cash deposited and with disbursements for salaries of collectors and clerks, stationery, postage, advertising, rent of office, etc., and for the taxes remaining uncollected, as aforesaid.

Of the foregoing debits the aggregate sum of \$241,503 92 is understood to be the proceeds of the leases and sales of land, as made to the Army and Navy, heads of families, citizens, etc.; and of said sum the one fourth part (\$60,375 98) has been paid to the Governor of the State of South Carolina, under Act of June 7, 1862, 12 Stat., 422.

Of the actual net avails of said leases and resales this office has not the means at hand to determine.

Very respectfully,

WILLIAM LAWRENCE, Comptroller.  
By J. TARBELL, Deputy Comptroller.

Hon. A. J. Warner, Chairman of Sub-Committee on Claims, House of Representatives,  
Washington, D. C.



**EXHIBIT No. 21.**

Forty-eighth Congress, first session. H. R. 6713. Printer's No., 7688.

In the House of Representatives. April 21, 1884—Read twice, referred to the Committee on Ways and Means, and ordered to be printed.  
Mr. Bennett introduced the following bill:

**A BILL**

*To suspend the collection of the direct tax imposed by an Act of Congress passed August fifth, eighteen hundred and sixty-one.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the collection in any of the States heretofore declared in insurrection of the direct tax imposed by an Act of Congress passed August fifth, eighteen hundred and sixty-one, entitled "An Act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes," be and the same is hereby suspended until otherwise provided by law.*

**EXHIBIT No. 22.**

Forty-eighth Congress, first session. S. 595. Report No. 124.

In the Senate of the United States. December 11, 1883—Mr. Colquitt asked and by unanimous consent obtained leave to bring in the following bill, which was read twice, and referred to the Committee on Claims.

February 6, 1884—Reported by Mr. Hoar with an amendment, viz.: Strike out all after the enacting clause and insert the part printed in *italics*.

**A BILL**

*To repay the State of Georgia twenty-seven thousand one hundred and seventy-five dollars and fifty cents, money advanced by said State for the defense of her frontiers against the Indians from seventeen hundred and ninety-five to eighteen hundred and eighteen, and not heretofore repaid.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury is hereby authorized and directed to audit the claims of the State of Georgia for moneys advanced by said State to pay troops ordered into service for the defense of her frontiers against the Indians from seventeen hundred and ninety-five to eighteen hundred and eighteen, inclusive, and not heretofore repaid to said State; and to pay to said State such sum, not exceeding twenty-two thousand five hundred and sixty-seven dollars and forty-two cents, as he shall find due and unpaid, out of any moneys in the Treasury not otherwise appropriated; provided, that if there be any sums of money due or owing to the United States by the State of Georgia, whatever amount, if any, may be found due under the provisions of this Act to the State of Georgia shall be credited to that State, and the balance only shall be paid by the State of Georgia or the United States, as shall appear by the striking of a balance to be due from the one party or the other.*

Forty-eighth Congress, first session. H. R. 4703. Printer's No. 6496. Report No. 752.

In the House of Representatives. February 5, 1884—Read twice, referred to the Committee on the Judiciary, and ordered to be printed.

March 11, 1884—Committed to the Committee of the Whole House on the State of the Union, and ordered to be printed.

Mr. Hammond introduced the following bill:

**A BILL**

*To require the payment in cash to the State of Georgia of thirty-five thousand five hundred and fifty-five dollars and forty-two cents, appropriated for said State by an Act to refund to the State of Georgia certain money expended by said State for the common defense in seventeen hundred and seventy-seven, approved March third, eighteen hundred and eighty-three.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be and he is hereby directed and required to pay to the State of Georgia, or its lawfully authorized agent, out of any money in the Treasury not otherwise appropriated, the sum of thirty-five thousand five hundred and fifty-five dollars and forty-two cents in cash, which sum was appropriated for the said State by an Act to refund to the State of Georgia certain money expended by said State for the common defense in seventeen hundred and seventy-seven, approved March third, eighteen hundred and eighty-three.*

SEC. 2. That all laws or parts of laws, and all rulings or decisions of any department of the Government, or of any officer thereof, inconsistent with the foregoing section, be and are hereby repealed and annulled.

Forty-eighth Congress, first session. S. 1948.

In the Senate of the United States. March 28, 1884—Mr. Brown introduced the following bill, which was read twice and referred to the Committee on Claims:

**A BILL**

*To require the payment in cash to the State of Georgia of thirty-five thousand five hundred and fifty-five dollars and forty-two cents appropriated for said State by an Act to refund to the State of Georgia certain money expended by said State for the common defense in seventeen hundred and seventy-seven, approved March third, eighteen hundred and eighty-three.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be and he is hereby directed and required to pay to the State of Georgia, or its lawfully authorized agent, out of any money in the Treasury not otherwise appropriated, the sum of thirty-five thousand five hundred and fifty-five dollars and forty-two cents in cash, which sum was appropriated for the said State by an Act to refund to the State of Georgia certain money expended by said State for the common defense in seventeen hundred and seventy-seven, approved March third, eighteen hundred and eighty-three.*

SEC. 2. That all laws or parts of laws, and all rulings or decisions of any department of the Government, or of any officer thereof, inconsistent with the foregoing section, be and are hereby repealed and annulled.



**EXHIBIT No. 23.**

Forty-eighth Congress, first session. House of Representatives. Report No. 752.

**PAYMENT TO STATE OF GEORGIA.**

March 11, 1884—Committed to the Committee of the Whole House on the state of the Union, and ordered to be printed.

Mr. Hammond, from the Committee on the Judiciary, submitted the following

**REPORT.**

[To accompany bill H. R. 4703.]

The Committee on the Judiciary, to whom was referred bill H. R. 4703, have considered the same, and submit the following report:

By Act approved March 3, 1883, it was enacted:

That the Secretary of the Treasury be and he is hereby authorized and required to pay to the State of Georgia, or its lawfully authorized agent, out of any money in the Treasury not otherwise appropriated, the sum of thirty-five thousand five hundred and fifty-five dollars and forty-two cents; the payment herein directed to be made, being for money paid by said State for supplies for the troops in seventeen hundred and seventy-seven, under the command of General James Jackson, engaged in local defense for the common cause of independence, and which was not included in the account of the State of Georgia in the settlement with the General Government under the Assumption Act of seventeen hundred and ninety (22 U. S. Stat. 485).

The bill under consideration is to compel payment of said sum in cash, and that all laws or parts of laws, and all rulings or decisions of any department of the Government, or of any officer thereof, inconsistent with such payment, be repealed and annulled.

The necessity for the legislation arises because Mr. Lawrence, the First Comptroller of the Treasury, decided that the amount so appropriated should not be paid, but be entered as a credit upon an alleged indebtedness of the State of Georgia to the United States, on account of its quota of direct tax levied by Acts of 1861 and 1862; and therefore the money has been withheld.

A little history will cast much light upon the subject. The Act of August 5, 1861, provided for collectors and assessors, and for lists of property "from all persons owning, possessing, and having the care or management of any lands," etc., for the purpose of taxing the same. (Sections fourteen to twenty-nine, inclusive.)

Section thirty-three enacted that "the taxes so assessed shall be and remain a lien upon all lands and other real estate of the *individuals* who may be assessed for the same" for two years.

Section fifty-two provided that as soon as Federal authority could be restored in the Southern States, the tax should be collected "from the *persons* residing or holding property or stocks therein."

The eighth section enacted:

That a direct tax of twenty millions of dollars be and is hereby annually laid upon the United States, and the same shall be and is hereby apportioned to the States respectively, in manner following: \* \* \* To the State of Georgia, five hundred and eighty-four thousand three hundred and sixty-seven and one third dollars.

To the other States according to their populations respectively. But so far from proposing to tax the States as such, by section thirteen, it expressly

exempted from such taxes "all property of, of whatever kind \* \* \* belonging to the United States or any State," etc.

Section fifty-three enacted: "That any State or Territory and the District of Columbia, may lawfully assume, assess, collect, and pay into the Treasury of the United States the direct tax, or its quota thereof, imposed by this Act upon the State, Territory, or the District of Columbia, in its own way and manner, by and through its own officers, assessors, and collectors," with addition of fifteen per cent if paid by the thirtieth of June, and of ten per cent if paid by the last of September of the tax year. It further provided, "that whenever notice of the intention to make such payment by the State, Territory, and the District of Columbia shall have been given to the Secretary of the Treasury," then the United States should cease trying to collect by its officers, unless such State should "be in default." In that event the Secretary of the Treasury "was to collect all or any part of said direct tax the same as though said State, Territory, or District had not given notice nor assumed to levy, collect, and pay said taxes or any part thereof (Section 46)."

Said section fifty-three further provided:

That the amount of direct tax apportioned to any State, Territory, or the District of Columbia, shall be liable to be paid and satisfied in whole or in part by the release of such State, Territory, or District, duly executed to the United States, of any liquidated and determined claim of such State, Territory, or District of equal amount against the United States, with the same abatement as if it were paid in money. (See 12 U. S. Stat., 292-312.)

Another law of June 7, 1862, applied only to the States in "insurrection or rebellion." It made the tax upon each parcel of land in each State chargeable with the tax due upon that parcel, plus fifty per cent, and made a lien on the lands therefor. It provided that "the owner or owners of said lots or parcels of lands" might discharge them by paying within a fixed time.

It provided for commissions to collect the tax in those States, to sell the lands of defaulting owners, etc., but was silent as to any assumption of the tax by those States. (12 U. S. Statutes, 422-426.)

From time to time Congress passed other Acts as to direct taxes, but none of them seem to have any bearing upon this question. For instance, that of May 13, 1862, enlarged the release proviso to include certain expenditures of the States in sending troops to the war, etc. (*Ib.*, 384); that of July 1, 1862, limited the collection to one year, till April, 1865 (*Ib.*, 489), and that of February 6, 1863, provided for sales of lands and redemption by their "owners" (*Ib.*, 640).

All the States, etc., "formally assumed the payment of the tax, except Delaware, the Territory of Colorado, and the eleven insurrectionary States." (Report Commissioner Internal Revenue, 1870. Sen. Ex. Doc. 24, first session Forty-sixth Congress, 236).

The collection of them was suspended as to unpaid sums by Congress.

In 1868 an account was opened upon the books of the Treasury Department against the State of Georgia, for her said quota of the direct tax, though Georgia had in no way assumed to pay the same. We stop not now to discuss why that was done, but proceed with the history.

The Western and Atlantic Railroad belonged to Georgia. The State bought for said road some of the rolling stock which had been used by the United States at the South in prosecuting the late war. This property was paid for in cash, the last payment being on the sixteenth of October, 1867. By an Act approved the third of March, 1877, because of alleged overvaluation of said property when sold, Congress authorized the reopening of said account and adjustment thereof. The Act required:

That when said claims shall have been adjusted in pursuance of the provisions of this Act, the Secretary of War be and he is hereby authorized to issue his warrant on the Treasury of the United States to the Governor of Georgia or his order, for the amount of money it is found ought to be refunded to said railroad on account of said settlement (19 U. S. Stat., 402-3).

The amount found to be due the State on that account was \$199,038 58. (See Q. M. Genl's Report, 1877, p. 120.)

So far as we are advised, no question of set-off was then made. Certainly the money was paid in cash.

On the third of March, 1879, Congress enacted in the Sundry Civil Bill:

That the Secretary of the Treasury be and he is hereby directed to pay to the State of Georgia \$72,296 94, for advances made to the United States for the suppression of hostilities by the Creek, Seminole, and Cherokee Indians in 1835, 1836, 1837, and 1838, and that said sum be paid out of any money in the Treasury not otherwise appropriated.

When payment was requested, the Third Auditor called attention to this direct tax account, and asked information. Mr. Sherman, Secretary of the Treasury, referred to Hon. A. G. Porter, First Comptroller:

Whether said amount should be set off against the amount of the direct tax under Act August 5, 1861, and Acts amendatory thereto, apportioned to the State.

He wrote an opinion. In stating the facts, after giving a synopsis of the Acts of 1861 and of June, 1862, *ante*, he added:

The State of Georgia never assumed the amount apportioned to that State, or any part of it.

And then, after stating the question, he said:

If the sum apportioned is a debt owing by the State of Georgia as a political corporation, then it may be assumed that it ought to be so credited. If, however, it is a debt owing by the persons within that State, whose lands have been taxed, and not by the State itself, then payment ought not to be withheld.

He then called attention to the decision of Mr. McCulloch, Secretary of the Treasury in 1866, as to Texas, and said:

Mr. McCulloch treated the apportionment of the direct tax as a debt owing by citizens of Texas, belonging to the class whose property was taxed, and not as a debt owing by the State in its political capacity.

Proceeding, he said:

The privilege of a State to assume implies that the debt before the assumption was not its own. Before the adoption of the Constitution the person whose property was charged with the tax owed the tax to the State, because the State imposed it and levied and collected it. Since the adoption of that instrument the United States has imposed the tax, and has itself levied and collected it. The obligation of the citizen is therefore to the Union and not to the State, and he, and not the State, is the debtor.

Enforcing his view by various citations, urging that any other would leave the States with power to thwart the collection of taxes, in an emergency, directly from the people, and declaring that this direct tax of 1861 could still be collected when the United States wishes, he concluded:

It follows, therefore, that it is my duty to direct that the sum appropriated to the State of Georgia shall not be credited as upon a debt owing by that State to the United States, but shall be paid at once to the State.

In answer to a resolution by the Senate this decision was transmitted, "with accompanying papers," to the Senate by Secretary Sherman on May 24, 1879. (See Senate Ex. Doc. No. 24, first session Forty-sixth Congress.)

The "accompanying papers" show that, before this opinion was made, attention was called to the fact that Kansas, Missouri, West Virginia, and other States had been credited with various sums there stated. Mr. Porter paid no attention to them, because (as we presume) they had assumed their respective quotas, and thus made them a debt against the States as such. Subsequently, in May, 1881, Mr. Lawrence, the successor of Mr. Porter, decided the Kansas case. His opinion contains thirty-three headnotes and twenty-five sub-headnotes. Those which are material, in our opinion, to the present discussion, are as follows:

In May, 1879, it was decided by the then First Comptroller that the direct tax apportioned to the State of Georgia by the Acts of August 5, 1861, and of June 7, 1862, was not a debt of the corporate State, which had not by an Act assumed it; and that although the tax had not been paid, yet money due from the United States to the State must be paid to the latter, and could not be used by way of set-off or in discharge of any part of the claim for direct taxes. (S. Ex. Doc. 24, first session, Forty-sixth Congress.) That conclusion is correct in law. The decision of that question was affected somewhat by the Act of June 7, 1862, not applicable to the question now presented. But the same result would be reached without reference to it. Under the Constitution, Congress cannot levy or enforce the collection of a tax or assessment on a corporate State which has not assumed it. The National Government does not operate on States in the collection of revenues, but on persons or property, or both. (2 Lawrence, Compt., Dec., 310.)

He further held that his predecessors had decided that Kansas had voluntarily assumed her quota of the tax; that he was bound by that decision, and that therefore a sum appropriated to Kansas should not be paid, but must be placed to her credit against said assumed debt. (*Ib.* 324.)

The decision of Lawrence, Comptroller, made twelfth May, 1883, refusing to pay this money to Georgia, has thirty headnotes. We do not believe that we need differ with any of them but the sixth, seventh, tenth, and nineteenth. We call attention to them, and the eighth also.

They are:

6. The First Comptroller had jurisdiction and authority in May, 1868, to certify a balance as due from the State of Georgia to the United States, for the quota of direct taxes apportioned to said State by the direct tax Act of August 5, 1861. (12 Stat., 294.)

7. The Comptroller now in office cannot inquire whether the Comptroller in office in May, 1868, who then certified a balance due from the State of Georgia to the United States on account of direct taxes, and before him *sufficient evidence* to authorize such action, or whether on such evidence as he then had *he properly construed the law*. The Judicial Courts or Congress can furnish the only relief in such case, if the Comptroller erred in charging the State with such liability.

8. Congress may by law require the accounting officers of the Treasury Department to set off a claim of the United States against a State, when such State demands payment of a claim due to it from the United States, although in such case Congress might not under the Constitution charge such corporate State with a liability and enforce its payment in any other mode except by such set-off.

9. The legislation of Congress in relation to the *quota* of direct taxes apportioned to Missouri and West Virginia seems in principle to recognize the correctness of the judgment of the First Comptroller, by which, in May, 1868, he certified a balance as due from the State of Georgia to the United States for its *quota* of the direct tax apportioned to that State by the Act of August 5, 1861.

10. The direct tax Act of August 5, 1861 (12 Stat., 311, Section 53), provides a special statutory mode of paying the quota of tax apportioned to any State by declaring that it *shall be liable to be paid by set-off* of any liquidating and determined claim of such State \* \* \* against the United States.

\* \* \* \* \*  
19. The balance certified by the First Comptroller, May 29, 1868, as due to the United States from the State of Georgia, for its quota of direct tax, under the Act of August 5, 1861, has not been in any form set aside or rendered inoperative.

*First*—Did any Comptroller ever, in any fair sense, try to raise a debt against Georgia for this tax? Mr. Lawrence, in this opinion, stated the facts in this language:

May 11, 1868, by Report No. 55,448 the Fifth Auditor "examined and adjusted an account between the United States and the State of Georgia," and found "that the sum of \$584,367 33 is due from said State to the United States \* \* \* for amount of direct tax imposed and apportioned by the eighth section of" the direct tax Act of August 5, 1861, "amount to be debited to the State of Georgia on the books of the Register of the Treasury."

May 19, 1868, the First Comptroller certified to the Register a balance due and payable as stated in the above report, and it was accordingly charged on the Register's books, as a debt due from the State of Georgia to the United States.

September 3, 1874, the Fifth Auditor by Report No. 5 adjusted an account between the United States and T. P. Robb, Samuel A. Fancoast, and John C. Bates, Commissioners of Direct Tax for the State of Georgia, from August 1, 1865, to December 15, 1866, and found them chargeable with "amount of direct tax laid upon the State of Georgia by Act of Congress approved August 5, 1861, \$584,367 33." The report shows costs chargeable to the State \$649 72, and finds the Commissioners entitled to credit for salaries and expenses \$9,835 06, amount of taxes remaining uncollected \$501,939 86, amount refunded to taxpayers on account of collections improperly made \$46 17, and cash deposited \$71,407 75, covered into the Treasury by miscellaneous warrants numbered and dated in 1866, respectively, 747 March 31, 524 June 25, 697 June 30, 596 September 29, and 726 December 31.

January 9, 1875, the Acting First Comptroller certified a balance of \$1,788 22 "due to the United States from the Commissioners, as stated in the above report." The amount of these warrants was placed to the credit of the State of Georgia in the Register's Office on said account for direct taxes.

In May, 1868, the amount fixed by the statute as the quota of Georgia was charged to her, and afterwards, in 1874, the same amount was charged by the same office to the United States Commissioners of Direct Tax for the State of Georgia, and they were credited with various sums collected and uncollected, and among others an "amount refunded to taxpayers on account of collections improperly made, \$46 17." The dealing with "taxpayers" showed that the State was not considered the debtor. The "taxpayers" owed only if Georgia had not assumed the debt. Taking the two accounts together, it seems plain that the account was so stated only for convenience of keeping the books of the Department. Any other view makes us to assume that the officer raising the account acted in ignorance of the law. The First Comptroller could have no jurisdiction under the Act of 1861 to state an account against any State which had not assumed the debt.

It is true, as stated in the tenth headnote, *supra*, that said Act provides a special statutory mode of paying the quota of tax apportioned to any State, by declaring that it "shall be liable to be paid" by set-off "of any liquidated and determined claim of such State \* \* \* against the United States." But more is true. That "special statutory mode of paying" is in the words which Mr. Lawrence omitted from the quotation, viz., "by the release of such State \* \* \* duly executed to the United States." By such release, with a view to such credit, the State consents to the account against it, and thus assumes the debt. It was by such a release that Missouri was credited (see Act July 17, 1862, in said Senate Ex. Doc. 24, p. 197). The same is true as to West Virginia, under the Act of February 25, 1867 (*Ib.*, 207). They assumed the debt and sought to have certain credits allowed. Georgia did not assume it, and therefore nothing in their cases authorizes the raising of such an account against Georgia.

Mr. Lawrence admits that this action of his predecessor is the only obstacle, and that it is not in the way of payment if it was "unauthorized or void." If no statute authorized it, it was "unauthorized." No statute created such a debt except by the consent of the State, and the State did

not consent. There is no pretense that the First Comptroller found such fact upon inquiry. It is only stated that he did an act from which it is inferred that he found such fact. But that does not follow; for he may have raised the account for other reasons. Congress cannot make such a debt against a State without its consent. There was no consent, and therefore the Act raising such account, when considered whether that Act made Georgia the debtor, is "void."

We admit that "all claims or demands whatever by the United States \* \* \* shall be settled and adjusted in the Department of the Treasury" (Rev. Stat., § 236). But there must be a claim of demand to adjust. The statute declared there could be none against a State till it assented, and Georgia never assented. So, while the Second Comptroller must "examine all accounts" settled by the Auditors (*Ib.*, 273), and the First Auditor "must examine all accounts accruing in the Treasury Department" (*Ib.*, 277); there must be a debtor, by law, before an account can exist for examination.

It is useless to examine whether Congress "may so far declare a State indebted to the United States as to secure satisfaction of the debt by withholding from it by set-off, as in this case, money admitted to be due from the United States to such State," for Congress has never made such declaration. Nor need we discuss whether Congress had power "to enforce the collection of tax against the corporate property of the State," though Mr. Lawrence said "the power to do so in time of war seems undoubted." Mr. Thaddeus Stevens, when he presented the direct tax bill to Congress, in the midst of war and to raise means promptly to prosecute the war, said "Congress has no constitutional power to assess taxes upon a State. It must assess it upon the individual (Sen. Ex. Doc. 24, *ante*, page 41). And the Act levying the tax expressly exempted all State property. It sought not to exercise such power if it existed."

Suppose we admit that Congress might legislate as the eighth headnote declares; Congress has not so legislated in this case. On the contrary, an effort to have it so legislate was defeated. On the sixth of December, 1882, the bill was reached and taken up in the House.

Mr. Holman, as soon as the report had been read, said:

The question is presented whether or not this sum should be paid by the United States directly to the State of Georgia, or whether it shall be allowed as a credit to that State on the amount of direct tax apportioned against the State under the Act of August 5, 1861.

Mr. Turner replied:

The direct tax is a tax due by the people of the State, not by the State in its corporate or aggregate capacity, etc. (Congressional Record, vol. 59, page 59.)

The issue thus made was debated *pro* and *con*. Mr. Holman moved to add to the bill—

*Provided, however*, that the said sum, \$35,555 42, shall not be paid by the Secretary of the Treasury until the sum due the United States of direct taxes apportioned to the State of Georgia under the Act entitled "An Act to provide increased revenue from imports to pay the interest on the public debt, and for other purposes," approved August 5, 1861, shall have been adjusted. (*Ib.*, 65.)

A motion to strike out the enacting clause was lost; the ayes were fifty-two and the nays were seventy-six.

Mr. Holman's proposed amendment was also lost by ayes fifty-three to nays ninety. An effort to adjourn was lost by eighty nays to fifty yeas.

Upon the passage of the bill the yeas and nays were demanded, and it was passed by yeas ninety-six to nays eighty. (*Ib.*, 68.) The report was read in the Senate, and the bill passed without debate. (Congressional Record, vol. 62, pp. 3660, 3670-3672.)

Again, we think the payments made to the State of Georgia, aforesaid, were at least waivers of any such claim by the United States as is here asserted, and did set aside and render inoperative said certification of the account in May, 1868, if it ever were operative for the purpose claimed.

Mr. Lawrence does not claim that the decision of his predecessor was correct. He seems to admit, in the opinion, that he would reverse it if he thought he could. He really suggests this legislation in his annual report for the fiscal year ending June 30, 1883. His language was this:

In 1868 the First Comptroller then in office certified balances due to the United States from the several States respectively, for direct taxes due and unpaid, under the direct tax Act of August 5, 1861 (12 Stat., 292), and such States were accordingly debited on the books in the office of the Register of the Treasury. It may well be doubted whether any *corporate* State was properly so charged, but as the Comptroller had jurisdiction of the subject-matter, his action, even if erroneous, cannot be treated as void by the Comptroller now in office. The result is, that money due, or which may become due, from the United States to any State so charged, to the extent of the amount so charged, cannot be paid to the State, but, by usage and law is to be applied by way of set-off. It may thus happen that some States will in this mode pay the direct tax, while others indebted in the same form will continue so indebted, and hence there will seem to be inequality, if not injustice, in the dealings between the United States and such States. The money appropriated by the Act of March 3, 1883 (22 Stat., 485), "to refund to the State of Georgia certain money expended by said State for the common defense in 1877," was withheld and applied by way of set-off on the sum charged against said State for direct taxes. If it be the purpose of Congress that moneys due to such States shall be paid, it is respectfully suggested that provision should be made authorizing payment without reference to the charge against any such States.

Suppose this money cannot be paid, and that Mr. Lawrence is right that the judicial Courts or Congress can furnish the only relief in such case, if the Comptroller erred in charging the State with such liability; still this bill should pass, and for that very reason. The United States admits this indebtedness to Georgia; it admits Georgia is not in debt to the United States, and it has formally undertaken to pay this debt to Georgia. Why should she be remitted to the Court of Claims? We see no reason therefor.

By reason of a real or supposed obstacle, unknown to Congress when the bill for payment was passed, the debt of the United States has not been paid. An officer of the United States erroneously put that obstacle in the way. It should be removed, unless there is some other reason to the contrary.

Is there any? There is none, unless the United States should refuse to pay simply because Georgia did not pay the direct tax. Laying aside the question whether this tax Act was operative within the States with which the United States was then at war, a refusal on that ground seems to be unjust for these and other reasons: Georgia does not owe the debt to the United States, but, at most, parts of it are due from certain of her citizens respectively. Only those citizens who in 1861 owned the lands taxed owe the taxes, and no property is bound for the tax except those lands. If Secretary McCulloch was right in his Texas decision, *ante*, and Mr. Porter was right in the Georgia case, *ante*, Georgia could not, after a fixed day in 1862, assume the debts if she wished. Georgia cannot collect these taxes without such assumption.

It does not seem just to collect from Georgia, as a State, any part of a debt she does not owe, nor from her, as representing the land owners of 1861, by withholding money which belongs to Georgia as a State, and if, as

representing any citizens, as representing all her citizens, whether owning lands in 1861 or anything else at any time.

It does not seem that the United States will ever collect those direct taxes of 1861. But could it and should it determine to do so, equal collections should be made from all the Southern States simultaneously. To make Georgia pay indirectly by withholding from her admitted dues from the United States has not been the policy of the Government, as appears from the payments already of over a quarter of a million of dollars to her in cash since said account was raised in 1868. We do not think it should become the policy of the Government; therefore we recommend that the bill do pass.

Forty-eighth Congress, first session. Senate Report No. 124.

In the Senate of the United States. February 6, 1884—Ordered to be printed.

Mr. Hoar, from the Committee on Claims, submitted the following

#### REPORT.

[To accompany bill S. 595.]

The Committee on Claims, to whom was referred the bill (S. 595) to repay the State of Georgia \$27,175 50, money advanced by said State for the defense of her frontiers against the Indians, from 1795 to 1818, and not heretofore repaid, have considered the same, and respectfully report:

The committee adopt the report made by Mr. Hoar, from the Committee on Claims, February 8, 1882, and report the accompanying bill as a substitute for Senate Bill 595, and recommend its passage.

[Senate Report, No. 148, Forty-seventh Congress, first session.]

The Committee on Claims, to whom was referred the bill (S. 270) to repay to the State of Georgia \$27,175 50, money advanced by said State for the defense of her frontier against the Indians, from 1795 to 1818, and not heretofore repaid, have considered the same, and respectfully report that a bill like this was introduced in the last Congress, and referred by the Senate to this committee. Mr. Hereford made the following report by authority of the committee:

The Committee on Claims, to whom was referred the bill to repay to the State of Georgia \$27,175 50, for money advanced by said State for the defense of her frontiers against the Indians, from 1795 to 1818, and not heretofore repaid, have had the same under consideration, and make the following report:

The State of Georgia presents an account for money expended in the defense of her frontiers against hostile Indians, as follows:

In the years 1795-1800.....	\$4,607 00
In the years 1812-1814.....	16,801 38
In the years 1817-1818.....	5,766 04

Original vouchers on which Georgia disbursed said sums, except for the first item of \$4,607, were examined by the committee and compared with the account certified to have been paid by the officials of the State of Georgia, stating the number of the warrant, name of the officer, the number of the voucher, page in the Treasurer's book, and the amount paid; and the account corresponded with the vouchers in every particular, with the before-mentioned exception. From these proofs the committee find due and unpaid the State of Georgia the sum of \$22,567 42.

The bill was referred to the Secretary of the Treasury, asking whether any of the items contained therein have been paid by any special or general Act of Congress, or by any of the proper departments, and if there is any reason why they should not be paid, and the following reply was received, which is made a part of this report:

TREASURY DEPARTMENT, December 15, 1880.

SIR: In reply to your communication of the eleventh instant, inclosing bill for the relief of the State of Georgia, and asking to be informed whether any of the items contained therein have been paid by any special or general Act of Congress, or by any of the proper departments, and if there is any reason why they should not be paid, I have the honor to inform you that the Second Auditor of the Treasury reports that the claim of the State of Georgia for repayment of \$27,175 50 advanced for the defense of her frontier against Indians from 1795 to 1818 has not been paid through his office; that the greater portion of the time covered by the account is prior to the organization of his office (March 3, 1817), and that the records thereof do not afford any information bearing upon the validity of the claim. Further, that the Third Auditor reports that the records of his office do not show that the said claim has been paid, or the claim been filed since it was withdrawn March 4, 1858, and invites attention to the letter of his office of January 22, 1880, in relation to the subject, a copy of which is inclosed herewith.

The papers accompanying your letter are returned herein.

Very respectfully,

JOHN SHERMAN, Secretary.

Hon. Frank Hereford, United States Senate.

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,  
WASHINGTON, D. C., January 22, 1880.

SIR: I have the honor to acknowledge the receipt of your letter of the seventeenth instant, requesting information relative to the claim of the State of Georgia for militia expenses from December, 1795, to August, 1827.

In reply I have to state that it appears from the records of this office that William M. Varnum, Esq., as agent for the State of Georgia, filed in this office a claim for payment to certain commissioned officers from 1795 to 1818, on the sixteenth of February, 1858 (No. 2862). On the twenty-third of February, 1858, the agent withdrew vouchers numbered 43, 64, 65, 66, 67, 68, 69, 70, 71, 72, and 75, for payments of services since 1815, for reference to the Second Auditor. These vouchers (pay-rolls) amounted to \$10,718 28.

The whole amount filed February 16, 1858, was \$49,056 39, and the balance of the claim was withdrawn from this office March 4, 1858, by said agent, as will more fully be seen by reference to the letter of this office to him of that date herewith inclosed, marked Exhibit A. There is no evidence on file in this office that the State of Georgia has since that time presented these claims, for settlement, to the accounting officers of the Treasury.

The claims withdrawn by the agent for reference to the Second Auditor have not been returned to this office, and this office has no official knowledge of the action of the Second Auditor thereon. The certified copy of abstract and letter of Hon. R. J. Atkinson, dated March 4, 1858 (marked Exhibit A), herewith returned.

I am, very respectfully,

E. W. KEIGHTLEY, Auditor.

W. O. Tuggle, Agent for the State of Georgia, Washington, D. C.

That the protection of the several States and the citizens thereof from Indian hostilities is, and has been from the organization of the Federal Government, a duty and a charge incumbent on the United States, and when, in the absence of such protection, the States themselves have made necessary expenditures for this purpose they should be reimbursed, are principles well founded in law and justice, and fully sanctioned by an unbroken line of precedents.

As the original vouchers for the expenditure of \$4,607, in the years 1795 to 1800 inclusive, were not furnished to the committee, said sum is not allowed.

The committee recommend the passage of the bill with the following amendments: Strike out "\$27,175 50" and insert "\$22,567 42," also strike out "1795" and insert "1812."

It appears from the papers accompanying the bill that the original vouchers were mislaid, and only discovered during the administration of Governor J. E. Brown, in 1857; that they were forwarded and presented for payment, and were pending before Congress in 1861, and by order of the Senate in January, 1879, the vouchers and papers were delivered to the agent of the State of Georgia.

We adopt Mr. Hereford's statement of the facts, but, for greater security in the case of a claim so old, we prefer to recommend a bill providing that the claim be audited in the Treasury Department before payment.

We therefore report the accompanying bill as a substitute for Senate bill and recommend its passage.

#### EXHIBIT No. 24.

Forty-eighth Congress, first session. H. R. 7082. Printer's No., 8269. Report No. 1658.

In the House of Representatives. May 20, 1884—Read twice, committed to the Committee of the Whole House, and ordered to be printed.

Mr. Hammond, from the Committee on the Judiciary, reported the following bill as a substitute for H. R. 6867:

#### A BILL

*To prevent the claim of the war taxes under the Act of August fifth, eighteen hundred and sixty-one, and Acts amendatory thereof, by the United States, as set-off against States having claims against the General Government.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That it shall not be lawful for the Secretary of the Treasury, or other person charged with or concerned in the payment of any sum of money from the United States to any State of the Union, to withhold the same from such State, or its duly authorized agent, by reason of any claim that such State is bound for any part of the war tax levied by the Act of August fifth, eighteen hundred and sixty-one, or any Act amendatory thereof, or to treat the said tax in any way as a set-off against any claim in favor of any State.

SEC. 2. That all laws or parts of laws, and all rulings or decisions of any department of the Government, or of any officer thereof, inconsistent with the foregoing section, be and are hereby repealed and annulled.

Forty-eighth Congress, first session. House of Representatives. Report No. 1658.

#### CLAIMS OF THE STATES AGAINST THE UNITED STATES.

May 20, 1884—Committed to the Committee of the Whole House, and ordered to be printed.

Mr. Hammond, from the Committee on the Judiciary, submitted the following

#### REPORT.

[To accompany bill H. R. 7082.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 7082), to adjust the claims of the States against the United States, submit the following report:

The obstacles in the way of paying claims of the States against the General Government growing out of the charge of the direct war tax against the States on the books of the Treasury Department, and the opinions of Treasury officials thereon, as well as the reasons why those obstacles should be removed, are set forth in Report No. 752 of this session of Congress in the Georgia case, made on the —th of March, 1884.

Your committee believe that the relief therein recommended for that State should be general as to all the States against which such set-off of war taxes is being or may be claimed, and report accordingly. They, however, report a substitute for Bill H. R. 6867, and recommend the passage of the substitute herewith submitted.

#### EXHIBIT No. 25.

In the Senate of the United States. May 28, 1884—Ordered to be printed.

Mr. Hoar, from the Committee on Claims, submitted the following report, to accompany bill S. 1948:

The Committee on Claims, to whom was referred the bill (S. 1948) to require the payment in cash to the State of Georgia of \$35,555 42, appropriated for said State by an Act to refund to the State of Georgia certain money expended by said State for the common defense in 1777, approved March 3, 1883, have considered the same, and respectfully report:

The last Congress passed an Act approved March 3, 1883, to refund to the State of Georgia certain moneys expended by her for the common defense in 1777, the evidence of which expenditure, having been lost for many years, had recently been discovered. The accounting officers of the Treasury declined to pay over to Georgia the money so appropriated, but claimed that it should be set off against moneys due from that State as her share of the direct tax assessed during the late rebellion.

We do not think that it was the expectation of Congress that such a set-off would be required, or that it is intended to enforce against any delinquent State the payment in money of its share of such tax. All the States which took part in the rebellion we suppose to be so delinquent. If matters should be left as they now are, it would be unjust to Georgia to withhold from her the sum due to her and thereby indirectly to compel the payment of a part of said tax from which the other Southern States are relieved. If, on the other hand, Congress shall reimburse to the States the amounts which have been paid by them equal justice will have been rendered to all, and there will be no propriety in withholding from Georgia the sum now in question, which is her due.

We therefore recommend the passage of the bill.

#### EXHIBIT No. 26.

Forty-eighth Congress, first session. S. 1948.

In the Senate of the United States. May 28, 1884—Ordered to be printed.

#### AMENDMENT

Intended to be proposed by Mr. Dolph to the bill (S. 1948) to require the payment in cash to the State of Georgia of thirty-five thousand five hundred and fifty-five dollars and forty-two cents, appropriated for said State by an Act to refund to the State of Georgia certain money expended by said State for the common defense in seventeen hundred and seventy-seven, approved March third, eighteen hundred and eighty-three, viz.: In Section 1, at the end of line 12, insert the following:

And the Secretary of the Treasury be and he is hereby authorized and directed to pay to the State of Oregon the sum of thirty-five thousand one hundred and forty dollars and sixty-seven cents, and to the State of California the sum of four hundred and ninety-five dollars and seventy-two cents, for moneys paid by said States in suppressing Modoc Indian hostilities during the Modoc war, and in defending said States from invasion by said Indians during the years eighteen hundred and seventy-two and eighteen hundred and seventy-three; and the said sums are hereby appropriated for such purpose out of any moneys in the Treasury not otherwise appropriated, and which sums were appropriated for the States of Oregon and California by an Act to reimburse said States, and the citizens thereof, in the suppression of Indian hostilities during the Modoc war in eighteen

hundred and seventy-two and eighteen hundred and seventy-three, in the Act of Congress approved January sixth, eighteen hundred and eighty-three.

#### EXHIBIT No. 27.

Forty-eighth Congress, first session. S. 1948.

In the Senate of the United States. June 16, 1884—Ordered to lie on the table and be printed.

#### AMENDMENT

Intended to be proposed by Mr. Miller of California, to the bill (S. 1948) to require the payment in cash to the State of Georgia of thirty-five thousand five hundred and fifty-five dollars and forty-two cents, appropriated for said State by an Act to refund to the State of Georgia certain money expended by said State for the common defense in seventeen hundred and seventy-seven, approved March third, eighteen hundred and eighty-three, viz.: Strike out all after the enacting clause, and insert the following:

That the Secretary of the Treasury be and he is hereby authorized and directed to credit each of the several States and Territories and the District of Columbia with amounts of money heretofore laid upon and apportioned to said States, Territories, and District of Columbia, respectively, levied as a direct tax under the provisions of the eighth section of the Act of Congress approved August fifth, eighteen hundred and sixty-one, entitled "An Act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes;" and he shall thereafter state an account between the United States and each of said States, Territories, and District, respectively, and he shall pay to each thereof, out of any money in the Treasury not otherwise appropriated, such sums of money as may appear to the credit of each thereof upon the books of the Treasury arising from such settlements.

Amend the title so as to read: "An Act to adjust certain accounts between the United States and the several States and Territories and the District of Columbia."

#### EXHIBIT No. 28.

#### SENATE CONCURRENT RESOLUTION No. 26.

Requesting our Senators and Representatives in Congress to give their support to certain measures now pending in Congress, or such as may hereafter be presented thereto, designed to effect the proper adjustment of the accounts of the different States, Territories, and the District of Columbia with the United States, arising out of the proceedings under the "direct tax" law of August 5, 1861 (adopted March 3, 1885).

Whereas, under the provisions of the law of August 5, 1861, a direct tax of \$20,000,000 was levied for war purposes by the United States and apportioned to the various States and Territories of the Union and the District of Columbia, according to their respective populations; and whereas, the amount of said tax so apportioned to the State of California was paid by the State in conformity with the provisions of said law; and whereas, while part of the other States and Territories and the District of Columbia have, like California, paid in full the tax thus apportioned to them, respectively,



many of those remaining have only paid in part, and some have paid nothing at all; and whereas, by such reason of such partial collection of said taxes (as shown by the official letter of the Secretary of the Treasury dated June 14, 1884) over \$5,000,000 of the same remains unpaid, and now stands charged on the books of the Treasury against the States and Territories delinquent, according to the measure of their respective delinquencies; and whereas, while, by the Act of Congress, the operation of said law as to the collection of said tax has long been suspended, still the interest and penalties thereby required to be collected, have been permitted to accumulate, until now the amount of the original levy, where delinquent, has almost quadrupled; and whereas, to enforce collection of such unpaid tax, penalties, and costs would, in the language of the Secretary of the Treasury, "put a grievous burden upon the people of the States which are in default of payment;" and therefore, in the words of the Comptroller of the Treasury, "it is believed that there is no desire now, on the part of any class of citizens, that the payment of this tax should be enforced;" and whereas, it is contemplated by the Constitution of the United States, and is required by the principles of common justice, that "taxes should be uniform throughout the United States," and that it would be violative of both to compel the payment of such levy by part of the United States and Territories while others were exempt from such burden; and whereas, measures are now pending in both branches of the present Congress (being House Bill No. 110, and Senate No. 795), which provides for the adjustment of this whole question, by authorizing the refunding to the States and Territories which have paid any or all of said tax the amount so paid, and the cancellation of all charges on account of delinquency against such States and Territories as have not paid the same; and whereas, the method of adjustment proposed by said bills has the hearty approval and indorsement of the Secretary and Comptroller of the Treasury, to whom said bills were referred by the committees of Congress considering the same for their efficient examination and report; and whereas, approving said plan of adjustment as being in its nature a measure of relief to the States in default, and one of simple justice to those which have paid; and in view of the important interests therein involved to the State of California; therefore,

*Be it resolved by the Senate, the Assembly concurring,* That our Senators and Representatives in Congress be requested to urge the passage of the bills hereinbefore referred to, or other measures having the same object in view, and to use their best endeavors, in coöperation with the agent of this State and in support of his efforts, to thus secure to the State the amount paid by her on account of said tax.

*Be it further resolved,* That a copy of the above preamble and resolution be sent, by the Governor of this State, to our Senators and Representatives in Congress, and to our State agent.

#### STATE OF CALIFORNIA, DEPARTMENT OF STATE.

I, Thomas L. Thompson, Secretary of State of the State of California, do hereby certify that I have carefully compared the annexed copy of Senate Concurrent Resolutions Nos. 25 and 26, adopted by the Legislature of the State of California March 5, 1885, with the original now on file in my office, and the same is a correct transcript therefrom and of the whole thereof. Also that this authentication is in due form and by the proper officer.

Witness my hand and the great seal of State, at office in Sacramento, California, the ninth day of April, A. D. 1886.

[SEAL.]

T. L. THOMPSON,  
Secretary of State.

By A. E. SHATTUCK, Deputy.

#### EXHIBIT No. 29.

Forty-ninth Congress, first session. H. R. 164.

In the House of Representatives. December 21, 1885—Read twice, referred to the Committee on Claims, and ordered to be printed.  
Mr. Henley introduced the following bill:

#### A BILL

*To credit and pay to the several States and Territories and the District of Columbia all moneys collected under the direct tax levied by the Act of Congress approved August fifth, eighteen hundred and sixty-one.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That it shall be the duty of the Secretary of the Treasury to credit to each State and Territory of the United States and the District of Columbia, a sum equal to all collections made from said States and Territories and the District of Columbia under the Act of Congress approved August fifth, eighteen hundred and sixty-one, and the amendatory Acts thereto, with an additional sum of fifteen per centum upon all amounts so collected, where such States or Territories or the District of Columbia have collected the same without cost to the United States.

SEC. 2. That all moneys still due to the United States on the quota of direct tax apportioned by section eight of the Act of Congress approved August fifth, eighteen hundred and sixty-one, are hereby remitted and relinquished.

SEC. 3. That there are hereby appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to reimburse each State, Territory, and the District of Columbia for all money found due to them under the provisions of this Act; and the Treasurer of the United States is hereby directed to pay the same; *provided*, that where the sums, or any part thereof, credited to any State, Territory, or the District of Columbia, has been collected from any citizen thereof, either directly or by sale, resale, or lease of property, such sums shall be held in trust by such State, Territory, or the District of Columbia, for the benefit of those of its citizens from whom it was collected, or their legal representatives.

#### EXHIBIT No. 30.

Forty-ninth Congress, first session. H. R. 2776.

In the House of Representatives. January 7, 1886—Read twice, referred to the Committee on the Judiciary, and ordered to be printed. (With proposed amendments.)

Mr. Price introduced the following bill:

#### A BILL

*To credit and pay to the several States and Territories, and the District of Columbia, all moneys collected under the direct tax levied by the Act of Congress approved August fifth, eighteen hundred and sixty-one.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That it shall be the duty of the

Secretary of the Treasury to credit to each State and Territory of the United States and the District of Columbia, a sum equal to all collections made from said States and Territories and the District of Columbia under the Act of Congress, approved August fifth, eighteen hundred and sixty-one, and the amendatory Acts thereto, with such additional credits as under said Act they are entitled to have in consequence of having paid any portion thereof without expense of collection to the United States; and such sums also as have been collected from lands or owners thereof under supplemental Acts on any account whatever.

SEC. 2. That all moneys still due to the United States, on the quota of direct tax apportioned by section eight of the Act of Congress approved August fifth, eighteen hundred and sixty-one, are hereby remitted and relinquished.

SEC. 3. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to reimburse each State, Territory, and the District of Columbia for all money found due to them under the provisions of this Act; and the Treasurer of the United States is hereby directed to pay the same; *provided*, that when the sums, or any part thereof, credited to any State, Territory, or the District of Columbia, have been collected from any citizen thereof, either directly or by sale, resale, or lease of property, such sums shall be held in trust by such State, Territory, or the District of Columbia, for the benefit of those of its citizens from whom it was collected, or their legal representatives.

#### EXHIBIT No. 31.

Forty-ninth Congress, first session. S. 995.

In the Senate of the United States. January 11, 1886—Mr. Stanford introduced the following bill, which was read twice, and referred to the Committee on the Judiciary:

#### A BILL

*To credit and pay to the several States and Territories and the District of Columbia all moneys collected under the direct tax levied by the Act of Congress approved August fifth, eighteen hundred and sixty-one.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That it shall be the duty of the Secretary of the Treasury to credit to each State and Territory of the United States, and the District of Columbia, a sum equal to all collections made from said States and Territories and District of Columbia under the Act of Congress approved August fifth, eighteen hundred and sixty-one, and the amendatory Acts thereto, with an additional sum of fifteen per centum upon all amounts so collected where such States or Territories or the District of Columbia have collected the same without cost to the United States.*

SEC. 2. That all moneys still due to the United States on the quota of direct tax apportioned by section eight of the Act of Congress approved August fifth, eighteen hundred and sixty-one, are hereby remitted and relinquished.

SEC. 3. That there is hereby appropriated out of any money in the Treasury not otherwise appropriated such sums as may be necessary to reimburse each State, Territory, and the District of Columbia for all money

found due to them under the provisions of this Act, and the Treasurer of the United States is hereby directed to pay the same; *provided*, that where the sums, or any part thereof, credited to any State, Territory, or the District of Columbia, have been collected from the citizens thereof, either directly or by sale of property, such sums shall be held in trust by such State, Territory, or the District of Columbia for the benefit of those of its citizens from whom they were collected, or their legal representatives.

#### EXHIBIT No. 32.

Forty-ninth Congress, first session. S. 2457. Calendar. No. 1310. Report No. 1138.

In the Senate of the United States. May 18, 1886—Mr. George, from the Committee on the Judiciary, submitted a report (No. 1138) accompanied by the following bill; which was read the first and second times, by unanimous consent:

#### A BILL

*For the relief of the State of Georgia.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be and he hereby is directed to pay, in lawful money, to the State of Georgia, the sum of \$35,555 42, appropriated to said State by an Act entitled "An Act to refund to the State of Georgia certain money expended by said State for the common defense," approved March 3, 1883, notwithstanding any claim of set-off arising from the direct tax apportioned to the State of Georgia, by an Act entitled "An Act to provide increased revenue from imposts, to pay interest on the public debt, and for other purposes."*

#### EXHIBIT No. 33.

Forty-ninth Congress, first session. Senate. Report No. 1138.

In the Senate of the United States. May 18, 1886—Ordered to be printed. Mr. George, from the Committee on the Judiciary, submitted the following

#### REPORT.

[To accompany bill S. 2457.]

The Committee on the Judiciary, to whom were referred certain resolutions of the State of Georgia in relation to a claim of the State against the United States, submit the following report, with accompanying bill:

By an Act approved March 3, 1883 (22 U. S. Stat. L., p. 485) Congress appropriated to the State of Georgia \$35,555 42 to reimburse the State for an expenditure made in the year 1777 for the common defense, that claim never having before been paid to the State. The accounting officers of the Treasury Department have declined to pay this sum to the State in money. They allege as the ground of this refusal that the books of the Treasury Department show that the State of Georgia is indebted to the United States in the sum of \$501,939 86 for a balance due on the sum of \$584,367 34 apportioned to the State as her quota of \$20,000,000, direct

tax levied by the Act of August 5, 1861 (12 U. S. Stat., p. 294). These officers claim the right to apply the said sum of \$35,555 42, so appropriated by the Act of March 3, 1883, as a set-off against this alleged indebtedness of the State of Georgia.

An examination of the printed opinion of the First Comptroller on this subject will show that this alleged indebtedness of the State of Georgia is based mainly upon the fact that his predecessor, on May 29, 1868, certified to the Register of the Treasury that the State of Georgia was a debtor to the United States to the amount of the direct tax so apportioned to her, and that on this an entry was made on the books of the Treasury charging the State accordingly, and that this certificate and entry, however erroneous they may be, are irreversible by the Treasury officials. It is also insisted that this charge against the State is proper and legal under the Acts of Congress. Against this the State of Georgia protests through resolutions of her Legislature, and insists that she is entitled to payment in money. These resolutions have been referred to the committee, and they constitute the subject-matter on which we are now called on to act.

We express no opinion as to the propriety of the action of the Treasury Department in holding as final, so far as it is concerned, the action of the Comptroller in 1868, in causing the State of Georgia to be entered as a debtor to the United States on the books of the Treasury, as above stated.

Our inquiry will be confined to the question raised, as to the reality and lawfulness of the alleged indebtedness on the part of the State in its organized and corporate capacity, for we assume that it will not be controverted that the State is not liable either to the United States or any other person or corporation for the separate and individual debts of any portion of her citizens, or even of all of them if the demand be against each one separately for a distinct and separate share of the aggregated whole. If there be no legal demand against Georgia as a State, in her organized political capacity, no demand which she is bound to pay out of her Treasury, by taxation levied according to her laws on the persons and property in the State liable to taxation, it is too clear for controversy, that the United States cannot, by any trick in bookkeeping in any of her departments lawfully refuse to pay to her an ascertained and acknowledged debt to the State, or apply it as a set-off.

A set-off, *ex vi termini*, means the application of a valid legal demand against the creditor in satisfaction or diminution of his claim. A set-off actually completed implies the prior existence of valid and lawful demands between the creditor and debtor, and which are finally settled by the transaction. The demand against the creditor must be against him in the same character and affecting the same right as the demand against which it is opposed. A demand against one in a fiduciary or trust relation cannot be set-off against a claim which he asserts in his individual and personal right, and *vice versa*; and a demand against one in a particular fiduciary character cannot be set-off against a claim he asserts in a different fiduciary relation. A set-off is allowable only because it is a lawful satisfaction or diminution of a demand, which is of itself property out of which the person asserting the set-off is entitled to be paid.

An acknowledged debtor cannot therefore rightfully refuse payment of his indebtedness upon any ground connected with the right of set-off unless he can show he has a valid debt against his creditor, which the latter owes to him in the same character and in the same right in which the creditor's debt is due.

That the United States are a debtor is undisputed. The debt to Georgia is acknowledged by statute directing it to be paid. Whether the

State of Georgia is a debtor to the United States is therefore the only question to be settled.

Whatever may be the effect of the entry on the books of the Treasury Department, made in 1868, so far as it relates to the powers and duties of the accounting officers to observe or to disregard it, is wholly immaterial in this controversy. Such entry is the mere *ex parte* act of one of the parties or its agents. It does not bind the other, either in law or in morals. It cannot be maintained that a debt can be created by a wrongful entry, whether it came from the fraud or ignorance of the officer making it. Its legal effect and force depends not on the fact of entry, but on its rightfulness and legality. The State of Georgia cannot be estopped by it, nor affected by it in any way, for the State was no party to it. She had neither the power to object to it effectually, nor to appeal from it.

So we must consider the question as if such entry constituted a mere assertion of right made on behalf of the United States, not a decision or settlement of the rights of Georgia. We must look into the case as if no such entry had been made.

It is unnecessary to inquire whether Congress had constitutional power to make the State of Georgia a debtor to the United States on account of the direct tax, if it shall appear that the Acts of Congress do not attempt to create such a relation.

An examination of the Act of August 5, 1861, heretofore cited, will make it very clear that the intent of Congress in enacting it was to levy a tax on individuals, making them debtors to the United States for their several and separate shares after they were ascertained by assessment. The thing taxed was land, and the persons who were to pay the tax were the owners of the land, each according to the value of his land, as compared with the value of all land within the State.

Two Acts were necessary in relation to the apportionment of the tax; one was to be done by Congress itself, and the other under their authority, and according to rules prescribed by them. The first was to fix the total amount to be collected throughout the Union, and to apportion this sum among the people of the several States. The second was, after fixing the sum to be collected in each State from the owners of the land therein, to apportion this sum for payment among the land owners in that State. By the Constitution the apportionment, as between the States, was to be on the basis of population, without reference to their aggregate or individual wealth; by a necessary law of taxation, the apportionment of the sum allotted to the people of each State was among the owners of the property taxed, and according to the value of the property owned by each.

When Congress came to perform this last act, or prescribe rules for its performance, they provided, in unmistakable language, who were to be the debtors for the tax. If the States were to be the debtors, provision would have been made for payment by the States out of their Treasuries, or by State action in some way. Nothing else would have been necessary. But this course was not pursued. The Act carefully provides for the appointment of Assessors to fix the share of each taxpayer. It then provides for Collectors to enforce collection from each taxpayer. All the lands in the State, with inconsiderable exceptions (and among them lands owned by the State), were to be valued. The amount due for each tract was to be charged against the owner, who was declared to be "liable to pay the direct tax." A list of these, together "with the tax payable by each," was required to be made. The tax was to be demanded of the taxpayers at their dwellings. On refusal of payment the personal property of each delinquent was required to be seized and sold for the payment of his tax.

If no personalty could be found, then so much of the land of each taxpayer was required to be sold as was necessary to pay the tax assessed against him; and if the amount was not bid, then the Collector was to bid the amount for the United States, and buy the land for them. The surplus produced by a sale was required to be paid to the owner, and he and his heirs were allowed to redeem. The tax, when collected, was to be paid by United States Collectors into the United States Treasury.

In all this there is not a single word or hint that Congress regarded the State as a debtor, or that the State was in any way to have any agency in or responsibility for the collection. The State, so far, is not allowed even to pay it out of its Treasury.

In the fifty-third section, however, the States are mentioned, but in terms which necessarily exclude the idea that Congress intended to impose a liability on them. This section, among other things, provides "that any State or Territory, or the District of Columbia, may lawfully *assume*, assess, collect, and pay into the Treasury of the United States the direct tax or its quota imposed by this Act;" and provision is made for notice to be given of this assumption, and a deduction of fifteen per cent is allowed in case of prompt payment. This is wholly inconsistent with the idea that the State was a debtor until assumption and notice of it, as provided in this section; but this is made still plainer, if possible, by a subsequent provision in the same section, where it is enacted that the quota of each "shall be liable to be paid and satisfied, in whole or in part, by the release of such State, Territory, or District of Columbia, duly executed to the United States, of any determined or liquidated demand against the United States." Here the right of set-off is allowed, but only on the condition that the State should first release a determined and liquidated demand against the United States. In the case of Georgia there was no assumption of the tax, and no release nor willingness to release to the United States a demand held by her. To say now that the State is a debtor reverses and abrogates all these various provisions of the statute, clearly proving that the land owners, and not the State, are the debtors.

Plain as this is, it is, if possible, made even clearer by a consideration of the Act of July 2, 1862 (12 U. S. Stat., p. 422), in relation to the collection of this tax in the insurrectionary States, of which Georgia was one. As to said States, this Act provides that whenever any portion of them shall become subject to the authority of the United States, the President may provide for collecting the tax in such portions; that the lands in such parts shall be charged with that portion of the tax apportioned to the State in which they lie as their value should bear to the value of all the lands in the State, as shown by the last assessment under State authority prior to 1861. The Act distinctly and clearly provides that, on payment of the tax so apportioned, the land so paid on shall be discharged from all further liability on account of said tax. It is impossible that this can stand with the idea that the tax is a debt against the State, to be paid out of its general revenue, or out of debts due to it, which are but, *pro tanto*, a substitute for its general revenue; since, if a debt be lost, or in any way should become unavailable, the deficit thereby created must be made good out of the general revenues of the State.

Under this law, as appears by the Comptroller's report, about \$70,000 (or about one eighth of the tax) has been paid; and the lands on which this payment was made are discharged from all liability on account of this tax. Now, if this set-off is enforced against the State, then the amount is lost to the general Treasury of the State, and this sum would have to be made good by taxation under State authority, under its general revenue

laws, under which these lands would be equally taxed with all other lands in the State. And thus would the plighted faith of the United States to the owners of these lands be broken.

Another provision in this Act of July 2, 1862, shows clearly that this tax was not regarded as a debt against the State. By Section 12 of the Act it is provided that lands bought by the United States for this direct tax should be sold, and one half the proceeds should be paid to the State—one fourth to indemnify loyal citizens for losses sustained in war, and the other fourth to be used by the State in removing persons (willing to go) of African descent to Hayti or Liberia. If the State was regarded as a debtor to the United States to the whole amount of the uncollected tax, it seems strange that money accruing in the attempt to enforce the collection of the tax should be directed to be paid to the State.

Again, this tax is a tax on land; and it could not have been apportioned among the States as this was, except as a direct tax on land. Being a tax on land, no other property but land could be taxed under the law, and no other persons but land owners made liable to pay it. The statute recognizes this, and proceeds, as we have shown, on this theory, and on that alone. Of the 1,500,000 people of Georgia in 1862, when this tax was required to be assessed and paid, probably not more than twenty-five thousand were land owners, or could be made liable to pay the tax. It has been shown that the true intent of this Act was to make each of these twenty-five thousand persons separate debtors to the United States, each for the ascertained and apportioned amount accruing on his land, which, when paid by him, relieved him and his property from all further liability on account of said tax. Now, if the principle on which alone this set-off can be allowed is recognized as true, viz.: that the State is debtor, then it will follow that, contrary to the plain provisions of the Acts of 1861 and 1862, all the people of Georgia who own property of any kind, or pay taxes on polls, become jointly liable for the amount of the unpaid tax—a sum made up of the separate debts of these twenty-five thousand land owners—and thus this tax on land alone becomes in fact a tax on all the property and persons in the State subject to taxation.

So far we have considered the question solely on its legal aspects; we do not propose to present any other. It is, however, clearly relevant to the legal merits of the controversy, if not directly involved in it, to consider the relations which the present population of Georgia bear to the debt of the twenty-five thousand land owners of the State in the year 1861.

It is now a quarter of a century since the direct tax was imposed. It is certain that largely more than one half of the people then living are now dead. Nearly one half of the people of Georgia—now citizens—were then mere property. They were not taxpayers, but constituted property on which taxes were paid. If this tax is now enforced, either partially or wholly by set-off or otherwise, against the State as a State, or against the people of the State as an organized political community, the enforcement can only be against the present citizens, the present taxpayers of the State. This would result in making the present population of Georgia, whether owners of land or not, pay the debt of a small portion of her citizens who were land owners a quarter of a century ago. This certainly is not justified by law.

Whether the United States have any remedy now for the collection of this tax does not come within our province to inquire; nor does the question whether it would now be just to undertake to collect it. It may be remarked, however, that the tax was levied in 1861, during the civil war; that after the war ended, the collection of the tax was suspended by Act

of Congress till January 1, 1868, and then by another Act of Congress till January, 1869. Since this last date no attempt has been made by the executive department to collect it. Nor has Congress made any complaint of this failure. In a report (No. 592) on this case made by the Senate Committee on Claims, through Mr. Hoar, first session Forty-eighth Congress, it is stated, "We do not think that it was the expectation of Congress that such a set-off would be required, or that it is intended to enforce against any delinquent State the payment in money of its share of such a tax."

The committee reach the conclusion that the direct tax levied by the Act of August 5, 1861, is not a legal debt in favor of the United States against any State which has not, by authority of its Legislature, assumed payment of the quota apportioned to it, and hence that the demand of the State of Georgia for payment in lawful money of the sum of \$35,555 42, appropriated by the Act of March 3, 1883, is not subject to be set off by any claim which the United States may have against her on account of said direct tax. They therefore recommend the passage of the accompanying bill, providing for the payment in money of the amount appropriated by the Act of March 3, 1883, heretofore referred to.

#### EXHIBIT No. 34.

Forty-ninth Congress, first session. H. R. 1.

In the House of Representatives. December 19, 1885—Read twice, referred to the Committee on War Claims, and ordered to be printed.

Mr. Hammond introduced the following bill:

#### A BILL

*To require the payment in cash to the State of Georgia of thirty-five thousand five hundred and fifty-five dollars and forty-two cents, appropriated by said State by an Act to refund to the State of Georgia certain money expended by said State for the common defense in seventeen hundred and seventy-seven, approved March third, eighteen hundred and eighty-three.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be and he is hereby directed and required to pay to the State of Georgia, or its lawfully authorized agent, out of any money in the Treasury not otherwise appropriated, the sum of thirty-five thousand five hundred and fifty-five dollars and forty-two cents, in cash, which sum was appropriated for the said State by an Act to refund to the State of Georgia certain money expended by said State for the common defense in seventeen hundred and seventy-seven, approved March third, eighteen hundred and eighty-three.*

SEC. 2. That all laws, or parts of laws, and all rulings or decisions of any department of the Government, or of any officer thereof, inconsistent with the foregoing section, be and are hereby repealed and annulled.

#### EXHIBIT No. 35.

Forty-ninth Congress, first session. H. R. 3. Report No. 35.

In the House of Representatives. December 19, 1885—Read twice, referred to the Committee on the Judiciary, and ordered to be printed.

January 19, 1886—Referred to the House calendar, and ordered to be printed.

Mr. Hammond introduced the following bill:

#### A BILL

*To prevent the claim of the war taxes under the Act of August fifth, eighteen hundred and sixty-one, and Acts amendatory thereof, by the United States, as set-off against States having claims against the General Government.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That it shall not be lawful for the Secretary of the Treasury, or other person charged with or concerned in the payment of any sum of money from the United States to any State of the Union, to withhold the same from such State, or its duly authorized agent, by reason of any claim that such State is bound for any part of the war tax levied by the Act of August fifth, eighteen hundred and sixty-one, or any Act amendatory thereof, or to treat the said tax in any way as a set-off against any claim in favor of any State.*

SEC. 2. That all laws or parts of laws, and all rulings or decisions of any department of the Government, or of any officer thereof, inconsistent with the foregoing section, be and are hereby repealed and annulled.

#### EXHIBIT No. 36.

#### WAR TAXES AS SET-OFF AGAINST STATE CLAIMS.

Mr. Hammond, by direction of the Committee on the Judiciary, called up from the House Calendar for present consideration the bill (H. R. 3) to prevent the claim of the war taxes under the Act of August 5, 1861, and Acts amendatory thereof, by the United States, as set-off against States having claims against the General Government.

The bill was read as follows:

*Be it enacted, etc., That it shall not be lawful for the Secretary of the Treasury, or other person charged with or concerned in the payment of any sum of money from the United States to any State of the Union, to withhold the same from such State, or its duly authorized agent, by reason of any claim that such State is bound for any part of the war tax levied by the Act of August 5, 1861, or any Act amendatory thereof, or to treat the said tax in any way as a set-off against any claim in favor of any State.*

SEC. 2. That all laws or parts of laws, and all rulings or decisions of any department of the Government or of any officer thereof, inconsistent with the foregoing section, be and are hereby repealed and annulled.

Mr. Holman. I trust the gentleman from Georgia will allow the report of the committee to be read.

Mr. Hammond. The gentleman from Indiana suggests the report of the Committee on the Judiciary be read.

The Speaker. The reading of the report will come out of the gentleman's time.

Mr. Hammond. I do not desire it to be read in my time; but as this bill will occupy more than this hour, I would suggest, by unanimous consent, the report of the committee together with the views of the majority be printed in the Record to-morrow morning, and then every gentleman can have them on his table before discussion is ended, and before we are called upon to vote.



Mr. Holman. I hope that will be done.

Mr. Hammond. Then I ask, by unanimous consent, that the report of the committee, together with the views of the minority, be printed in the Record.

There was no objection, and it was ordered accordingly.

The report of the Committee on the Judiciary as well as the views of the minority are as follows:

Mr. Hammond, from the Committee on the Judiciary, submitted the following reports to accompany bill H. R. 3:

The Committee on the Judiciary, to whom was referred bill H. R. 3, have considered the same, and submitted the following report:

By an Act of Congress approved March 3, 1883, the Secretary of the Treasury was required to pay to the State of Georgia \$35,555 42 (see 22 U. S. Stat., 485). It was not paid because of a decision of Mr. Lawrence, First Comptroller of the Treasury, placing it to the credit of the State on the books of the Treasury against a sum charged there against the State as its quota of a direct tax levied during the late war.

Bill H. R. 4703, first session Forty-eighth Congress, was to compel payment, that decision to the contrary notwithstanding. The Judiciary Committee, by Mr. Hammond, on the eleventh of March, 1884, reported in favor of the passage of that bill. (See Report No. 752, first session Forty-eighth Congress.)

On the second of May, 1884, Mr. Barksdale of Mississippi, introduced and had referred to said committee a bill (H. R. 6867) to authorize settlements with any State, and directing that "in such settlement and adjustment no charge shall be made, or if made, shall be valid by way of set-off or otherwise against any State on account of the direct war tax laid by Congress by an Act approved August 5, 1861."

On the twentieth of May, 1884, said committee, by Mr. Hammond, reported thereon as follows:

"The obstacles in the way of paying claims of States against the General Government growing out of the charge of the direct war tax against the States on the books of the Treasury Department, and the opinions by Treasury officials thereon, as well as the reasons why those obstacles should be removed, are set forth in Report No. 752 of this session of Congress in the Georgia case, made on the — of March, 1884.

"Your committee believe that the relief therein recommended for that State should be general as to all the States against which such set-off of war taxes is being or may be claimed, and report accordingly. They, however, report a substitute for bill H. R. 6867, and recommend the passage of the substitute herewith submitted."

The substitute so reported was this:

"That it shall not be lawful for the Secretary of the Treasury, or other person charged with or concerned in the payment of any sum of money from the United States to any State of the Union, to withhold the same from such State, or its duly authorized agent, by reason of any claim that such State is bound for any part of the war tax levied by the Act of August 5, 1861, or any Act amendatory thereof, or to treat the said tax in any way as a set-off against any claim in favor of any State.

"SEC. 2. That all laws or parts of laws, and all rulings or decisions of any department of the Government, or of any officer thereof, inconsistent with the foregoing section be and are hereby repealed and annulled."

This report was No. 1658, and the substitute bill H. R. 7082, first session, Forty-eighth Congress. The substituted bill and Georgia's separate bill both remained on the calendar, but were never reached in the last Congress. The present bill (H. R. 3) is a copy of said substitute.

This committee adopted the reasoning of the former Judiciary Committee in those reports.

While the former was on the Georgia case only, it covered all the States in like condition. Omitting, therefore, only the introductory parts already substantially given, your committee adopts the language of that report as follows:

"A little history will cast much light upon the subject. The Act of August 5, 1861, provided for Collectors and Assessors, and for lists of property 'from all persons owning, and possessing, and having the care or management of any lands,' etc., for the purpose of taxing the same. (Sections 14 to 29, inclusive.)

"Section 33 enacted that 'the taxes so assessed shall be and remain a lien upon all lands and other real estate of the individuals who may be assessed for the same' for two years.

"Section 52 provided that as soon as Federal authority could be restored in the Southern States the tax should be collected 'from the persons residing or holding property or stocks therein.'

"The eighth section enacted—

"That a direct tax of \$20,000,000 be and is hereby annually laid upon the United States, and the same shall be and is hereby apportioned to the States, respectively, in manner following: \* \* \* To the State of Georgia, \$584,367 33½."

"To the other States according to their populations, respectively. But so far from proposing to tax the States as such, by Section 13 it expressly exempted from such taxes 'all property, of whatever kind \* \* \* belonging to the United States or any State,' etc.

"Section 53 enacted 'that any State or Territory and the District of Columbia may lawfully assume, assess, collect, and pay into the Treasury of the United States the direct tax, or its quota thereof, imposed by this Act upon the State, Territory, or the District of Columbia in its own way and manner, by and through its own officers, Assessors, and Collectors,' with deduction of fifteen per cent if paid by the thirtieth of June, and of ten per cent if paid by the last of September, of the tax year.

"It further provided 'that whenever notice of the intention to make such payment by the State, Territory, and the District of Columbia shall have been given to the Secretary of the Treasury,' then the United States should cease trying to collect by its officers unless such State should 'be in default.' In that event the Secretary of the Treasury 'was to collect all or any part of said direct tax the same as though said State, Territory, or District had not given notice nor assumed to levy, collect, and pay said taxes or any part thereof' (Section 46).

"Said Section 53 further provided—

"That the amount of direct tax apportioned to any State, Territory, or the District of Columbia, shall be liable to be paid and satisfied in whole or in part by the release of such State, Territory, or District, duly executed to the United States, of any liquidated and determined claim of such State, Territory, or District of equal amount against the United States with the same abatement as if it were paid in money.' (See 12 U. S. Statutes, 292-312.)

"Another law of June 7, 1862, applied only to the States in 'insurrection or rebellion.' It made the tax upon each parcel of land in each State chargeable with the tax due upon that parcel, plus fifty per cent, and made a lien on the lands therefor. It provided that 'the owner or owners of said lots or parcels of lands' might discharge them by paying within a fixed time.

"It provided for commissions to collect the tax in those States, to sell the lands of defaulting owners, etc., but was silent as to any assumption of the tax by those States. (12 U. S. Statutes, 422-426.)

"From time to time Congress passed other Acts as to direct taxes, but none of them seem to have any bearing upon this question. For instance, that of May 13, 1862, enlarged the release proviso to include certain expenditures of the States in sending troops to the war, etc. (Ib. 384); that of July 1, 1862, limited the collection to one year, till April, 1865 (Ib. 489), and that of February 6, 1863, provided for sales of lands and redemption by their 'owners' (Ib. 640).

"All the States, etc., 'formally assumed the payment of the tax except Delaware, the Territory of Colorado, and the eleven insurrectionary States.' (Report Commissioner Internal Revenue, 1870. See Ex. Doc. 24, first session Forty-sixth Congress, 236.)

"The collection of them was suspended as to unpaid sums by Congress.

"In 1868 an account was opened upon the books of the Treasury Department against the State of Georgia for her said quota of the direct tax, though Georgia had in no way assumed to pay the same. We stop not now to discuss why that was done, but proceed with the history.

"The Western and Atlantic Railroad belongs to Georgia. The State bought for said road some of the rolling stock which had been used by the United States at the South in prosecuting the late war. This property was paid for in cash, the last payment being on the sixteenth of October, 1867. By an Act approved the third of March, 1877, because of alleged overvaluation of said property when sold, Congress authorized the reopening of said account and adjustment thereof. The Act required:

"That when said claims shall have been adjusted in pursuance of the provisions of this Act the Secretary of War be and he is hereby authorized to issue his warrant on the Treasury of the United States to the Governor of Georgia or his order, for the amount of money it is found ought to be refunded to said railroad on account of said settlement.' (19 U. S. Stat., 402-3.)

"The amount found to be due the State on that account was \$199,038 58. (See Q. M. Gen.'s Report, 1887, p. 120.)

"So far as we are advised no question of set-off was then made. Certainly the money was paid in cash.

"On the third of March, 1879, Congress enacted in the Sundry Civil Bill—

"That the Secretary of the Treasury be and he is hereby directed to pay to the State of Georgia \$72,296 94 for advances made to the United States for the suppression of hostilities by the Creek, Seminole, and Cherokee Indians in 1835, 1836, 1837, and 1838, and that said sum be paid out of any money in the Treasury not otherwise appropriated."

"When payment was requested the Third Auditor called attention to this direct tax account, and asked information. Mr. Sherman, Secretary of the Treasury, referred to Hon. A. G. Porter, First Comptroller, 'whether said amount should be set off against the amount of the direct tax under Act August 5, 1861, and Acts amendatory thereto, apportioned to the State.' He wrote an opinion. In stating the facts, after giving a synopsis of the Acts of 1861 and of June, 1862, *ante*, he added: 'The State of Georgia never assumed the amount apportioned to that State, or any part of it.' And then, after stating the question, he said:

"If the sum apportioned is a debt owing by the State of Georgia, as a political corporation, then it may be assumed that it ought to be so credited. If, however, it is a debt owing by the persons within that State, whose lands have been taxed, and not by the State itself, then payment ought not to be withheld."



"He then called attention to the decision of Mr. McCulloch, Secretary of the Treasury in 1866, as to Texas, and said:

"Mr. McCulloch treated the apportionment of the direct tax as a debt owing by citizens of Texas belonging to the class whose property was taxed, and not as a debt owing by the State in its political capacity."

"Proceeding, he said:

"The privilege of a State to assume implies that the debt before the assumption was not its own. Before the adoption of the Constitution the person whose property was charged with the tax owed the tax to the State, because the State imposed it and levied it, and collected it. Since the adoption of that instrument the United States has imposed the tax, and has itself levied and collected it. The obligation of the citizens is therefore to the Union and not to the State, and he and not the State is the debtor."

"Enforcing his views by various citations, urging that any other would leave the States with power to thwart the collection of taxes, in an emergency, directly from the people, and declaring that this direct tax of 1861 could still be collected when the United States wishes, he concluded:

"It follows, therefore, that it is my duty to direct that the sum appropriated to the State of Georgia shall not be credited as upon a debt owing by that State to the United States, but shall be paid at once to the State."

"In answer to a resolution by the Senate this decision was transmitted, 'with accompanying papers,' to the Senate by Secretary Sherman on May 24, 1879. (See Senate Ex. Doc. No. 24, first session Forty-sixth Congress.)

"The 'accompanying papers' show that before this opinion was made attention was called to the fact that Kansas, Missouri, West Virginia, and other States had been credited with various sums there stated. Mr. Porter paid no attention to them, because (as we presume) they had assumed their respective quotas, and thus made them a debt against the States as such. Subsequently, in May, 1881, Mr. Lawrence, the successor of Mr. Porter, decided the Kansas case. His opinion contains thirty-three head-notes and twenty-five sub-headnotes. Those which are material, in our opinion, to the present discussion are as follows:

"In May, 1879, it was decided by the then First Comptroller that the direct tax apportioned to the State of Georgia by the Acts of August 5, 1861, and of June 7, 1862, was not a debt of the corporate State, which had not by an Act assumed it; and that although the tax had not been paid, yet money due from the United States to the State must be paid to the latter, and could not be used by way of set-off or in discharge of any part of the claim for direct taxes. (See S. Ex. Doc. No. 24, first session Forty-sixth Congress.) The conclusion is correct in law. The decision of that question was affected somewhat by the Act of June 7, 1862, not applicable to the question now presented. But the same result would be reached without reference to it. Under the Constitution Congress can not levy or enforce the collection of a tax or assessment on a corporate State which has not assumed it. The National Government does not operate on States in the collection of revenues, but on persons or property, or both.' (2 Lawrence, Compt., Dec., 310.)

"He further held that his predecessors had decided that Kansas had voluntarily assumed her quota of the tax; that he was bound by that decision, and that therefore a sum appropriated to Kansas should not be paid, must be placed to her credit against said assumed debt. (*Ib.*, 324.)

"The decision of Lawrence, Comptroller, made twelfth May, 1883, refusing to pay this money to Georgia, has thirty headnotes. We do not believe that we need differ with any of them but the sixth, seventh, tenth, and nineteenth. We call attention to them, and the eighth, also. They are:

"6. The First Comptroller had jurisdiction and authority in May, 1868, to certify a balance as due from the State of Georgia to the United States, for the quota of direct taxes apportioned to said State by the Direct Tax Act of August 5, 1861. (12 Stat., 294.)

"7. The Comptroller now in office can not inquire whether the Comptroller in office in May, 1868, who then certified a balance due from the State of Georgia to the United States on account of direct taxes, had before him sufficient evidence to authorize such action, or whether on such evidence as he then had he properly construed the law. The judicial Courts or Congress can furnish the only relief in such case, if the Comptroller erred in charging the State with such liability.

"8. Congress may by law require the accounting officers of the Treasury Department to set off a claim of the United States against a State, when such State demands payment of a claim due to it from the United States, although in such case Congress might not under the Constitution charge such corporate State with a liability and enforce its payment in any other mode except by such set-off.

"9. The legislation of Congress in relation to the quota of direct taxes apportioned to Missouri and West Virginia seems in principle to recognize the correctness of the judgment of the First Comptroller, by which, in May, 1868, he certified a balance as due from the State of Georgia to the United States for its quota of the direct tax apportioned to that State by the Act of August 5, 1861.

"The direct tax of August 5, 1861 (12 Stat., 311, Section 53), provides a special statutory mode of paying the quota of tax apportioned to any State by declaring that it 'shall be liable to be paid' by set-off 'of any liquidated and determined claim of such State \* \* \* against the United States.

"The balance certified by the First Comptroller, May 29, 1868, as due to the United States

from the State of Georgia, for its quota of direct tax, under the Act of August 5, 1861, has not been in any form set aside or rendered inoperative."

"First. Did any Comptroller ever, in any fair sense, try to raise a debt against Georgia for this tax? Mr. Lawrence, in this opinion, stated the facts in this language:

"May 11, 1868, by Report No. 55448 the Fifth Auditor 'examined and adjusted an account between the United States and the State of Georgia,' and found 'that the sum of \$584,367 33 is due from said State to the United States \* \* \* for amount of direct tax imposed and apportioned by the eighth section of' the Direct Tax Act of August 5, 1861, 'amount to be debited to the State of Georgia on the books of the Register of the Treasury.'"

"May 29, 1868, the First Comptroller certified to the Register a balance due and payable as stated in the above report, and it was accordingly charged, on the Register's books, as a debt due from the State of Georgia to the United States."

"September 3, 1874, the Fifth Auditor by Report No. 5 adjusted an account between the United States and T. P. Robb, Samuel A. Pancoast, and John C. Bates, Commissioners of Direct Tax for the State of Georgia, from August 1, 1865, to December 15, 1866, and found them chargeable with 'amount of direct tax laid upon the State of Georgia by Act of Congress approved August 5, 1861, \$584,367 33.' The report shows costs chargeable to the State \$649 72, and finds the Commissioners entitled to credit for salaries and expenses \$9,835 06, amount for taxes remaining uncollected \$501,939 86, amount refunded to taxpayers on account of collections improperly made \$46 17, and cash deposited \$71,407 75, covered into the Treasury by miscellaneous warrants numbered and dated in 1866, respectively, 747 March 31, 524 June 25, 697 June 30, 596 September 29, and 726 December 31."

"January 9, 1875, the acting First Comptroller certified a balance of \$1,788 22 'due to the United States from the Commissioners, as stated in above report. The amount of these warrants was placed to the credit of the State of Georgia in the Register's office on said account for direct taxes."

"In May, 1868, the amount fixed by the statute as the quota of Georgia was charged to her, and afterward, in 1874, the same amount was charged by the same office to the United States Commissioners of Direct Tax for the State of Georgia, and they were credited with various sums collected and uncollected, and among others an 'amount refunded to taxpayers on account of collections improperly made, \$46 17.' The dealing with 'taxpayers' showed that the State was not considered the debtor. The 'taxpayers' owed only if Georgia had not assumed the debt. Taking the two accounts together, it seems plain that the account was so stated only for convenience of keeping the books of the department. Any other view makes us to assume that the officer raising the account acted in ignorance of the law. The First Comptroller could have no jurisdiction under the Act of 1861 to state an account against any State which had not assumed the debt."

"It is true, as stated in the tenth headnote, *supra*, that said Act provides a special statutory mode of paying the quota of tax apportioned to any State, by declaring that it 'shall be liable to be paid' by set-off 'of any liquidated and determined claim of such State \* \* \* against the United States.' But more is true. That 'special statutory mode of paying' is in the words which Mr. Lawrence omitted from the quotation, namely, 'by the release of such State \* \* \* duly executed to the United States.' By such release, with a view to such credit, the State consents to the account against it, and thus assumes the debt. It was by such a release that Missouri was credited (see Act of July 17, 1862, in said Senate Ex. Dec. 24, page 197). The same is true as to West Virginia, under the Act of February 25, 1867 (*Ib.*, 207). They assumed the debt and sought to have certain credits allowed. Georgia did not assume it, and therefore nothing in their cases authorizes the raising of such an account against Georgia."

"Mr. Lawrence admits that this action of his predecessor is the only obstacle, and that it is not in the way of payment if it was 'unauthorized or void.' If no statute authorized it, it was 'unauthorized.' No statute created such a debt except by the consent of the State, and the State did not consent. There is no pretense that the First Comptroller found such fact upon inquiry. It is only stated that he did an act from which it is inferred that he found such fact. But that does not follow; for he may have raised the account for other reasons. Congress can not make such a debt against a State without its consent. There was no consent, and therefore the Act raising such account, when considered as to whether that Act made Georgia the debtor, is 'void.'"

"We admit that 'all claims or demands whatever by the United States \* \* \* shall be settled and adjusted in the Department of the Treasury' (Rev. Stat., §236). But there must be a claim or demand to adjust. The statute declared there could be none against a State till it assented, and Georgia never assented. So, while the Second Comptroller must 'examine all accounts' settled by the Auditors (*Ib.*, 273), and the First Auditor 'must examine all accounts accruing in the Treasury Department' (*Ib.*, 277), there must be a debtor, by law, before an account can exist for examination."

"It is useless to examine whether Congress 'may so far declare a State indebted to the United States as to secure satisfaction of the debt by withholding from it by set-off, as in this case, money admitted to be due from the United States to such State,' for Congress has never made such declaration. Nor need we discuss whether Congress had power 'to enforce the collection of tax against the corporate property of the State,' though Mr. Lawrence said 'the power to do so in the time of war seems undoubted.' Mr. Thaddeus Stevens, when he presented the Direct Tax Bill to Congress, in the midst of war and to raise means promptly to prosecute the war, said 'Congress has no constitutional power to assess taxes upon a State. It must assess it upon the individual' (Sen. Ex. Doc. 24, *ante*, page 41). And

the Act levying the tax expressly exempted all State property. It sought not to exercise such power if it existed.

"Suppose we admit that Congress might legislate as the eighth headnote declares; Congress has not so legislated in this case. On the contrary, an effort to have it so legislate was defeated. On the sixth of December, 1882, the bill was reached and taken up in the House.

"Mr. Holman, as soon as the report had been read, said:

"The question is presented whether or not this sum should be paid by the United States directly to the State of Georgia, or whether it shall be allowed as a credit to that State on the amount of direct tax apportioned against the State under the Act of August 5, 1861."

"Mr. Turner replied:

"The direct tax is a tax due by the people of the State, not by the State in its corporate or aggregate capacity," etc.—Congressional Record, volume 59, page 59.

"The issue thus made was debated pro and con. Mr. Holman moved to add to the bill—

"Provided, however, that the said sum, \$35,555 42, shall not be paid by the Secretary of the Treasury until the sum due the United States of direct taxes apportioned to the State of Georgia under the Act entitled 'An Act to provide increased revenue from imports to pay the interest on the public debt, and for other purposes,' approved August 5, 1861, shall have been adjusted." (*Ib.*, 65.)

"A motion to strike out the enacting clause was lost; the ayes were 52 and the nays were 76.

"Mr. Holman's proposed amendment was also lost by ayes 53 to nays 90. An effort to adjourn was lost by 80 nays to 50 yeas. Upon the passage of the bill the yeas and nays were demanded, and it was passed by yeas 96 to nays 80. (*Ib.*, 68.) The report was read in the Senate, and the bill passed without debate.—Congressional Record, volume 62, pages 3660, 3670-3672.

"Again, we think the payments made to the State of Georgia, aforesaid, were at least waivers of any such claim by the United States as is here asserted, and did set aside and render inoperative said certification of the account in May, 1868, if it ever were operative for the purpose claimed.

"Mr. Lawrence does not claim that the decision of his predecessor was correct. He seems to admit, in the opinion, that he would reverse it if he thought he could. He really suggests this legislation in his annual report for the fiscal year ending June 30, 1883. His language was this:

"In 1868 the First Comptroller then in office certified balances due to the United States from several States respectively, for direct taxes due and unpaid, under the Direct Tax Act of August 5, 1861 (12 Stat., 292), and such States were accordingly debited on the books in the office of the Register of the Treasury. It may well be doubted whether any corporate State was properly so charged, but as the Comptroller had jurisdiction of the subject-matter, his action, even if erroneous, can not be treated as void by the Comptroller now in office. The result is that money due, or which may become due, from the United States to any State so charged, to the extent of the amount so charged, can not be paid to the State, but, by usage and law, is to be applied by way of set-off. It may thus happen that some States will in this mode pay the direct tax, while others indebted in the same form will continue so indebted; and hence there will seem to be inequality, if not injustice, in the dealings between the United States and such States. The money appropriated by the Act of March 3, 1883 (22 Stat., 485), 'to refund to the State of Georgia certain money expended by said State for the common defense in 1877,' was withheld and applied by way of set-off on the sum charged against said State for direct taxes. If it be the purpose of Congress that moneys due to such States shall be paid, it is respectfully suggested that provision should be made authorizing payment without reference to the charge against any such States."

"Suppose this money can not be paid, and that Mr. Lawrence is right that the judicial Courts or Congress can furnish the only relief in such case, if the Comptroller erred in charging the State with such liability; still this bill should pass, and for that very reason. The United States admits this indebtedness to Georgia; it admits Georgia is not in debt to the United States, and it has formally undertaken to pay this debt to Georgia. Why should she be remitted to the Court of Claims. We see no reason therefor.

"By reason of a real or supposed obstacle, unknown to Congress when the bill for payment was passed, the debt of the United States has not been paid. An officer of the United States erroneously put that obstacle in the way. It should be removed, unless there is some other reason to the contrary.

"Is there any? There is none, unless the United States should refuse to pay simply because Georgia did not pay the direct tax. Laying aside the question whether this tax Act was operative within the States with which the United States was then at war, a refusal on that ground seems to be unjust for these and other reasons: Georgia does not owe the debt to the United States, but, at most, parts of it are due from certain of her citizens respectively. Only those citizens who in 1861 owned the lands taxed owe the taxes, and no property is bound for the tax except those lands. If Secretary McCulloch was right in his Texas decision, *ante*, and Mr. Porter was right in the Georgia case, *ante*, Georgia could not, after a fixed day in 1862, assume the debts, if she wished. Georgia can not collect these taxes without such assumption.

"It does not seem just to collect from Georgia, as a State, any part of a debt she does not owe, nor from her, as representing the land owners of 1861, by withholding money

which belongs to Georgia as a State, and if, as representing any citizens, as representing all her citizens, whether owning lands in 1861 or anything else at any time.

"It does not seem that the United States will ever collect those direct taxes of 1861. But could it and should it determine to do so, equal collections should be made from all the Southern States simultaneously. To make Georgia pay indirectly by withholding from her admitted dues from the United States has not been the policy of the Government, as appears from the payments already of over a quarter of a million dollars to her in cash since said account was raised in 1868. We do not think it should become the policy of the Government. Therefore, we recommend that the bill do pass."

The committee therefore recommend the passage of the bill.

Mr. Hepburn, from the Committee on the Judiciary, submitted the following as the views of the minority (to accompany bill H. R. 3):

The officers of the Treasury are required to, and do, set off sums of money due from the United States to any State against any sums that may be due from the State.

These officers have for many years regarded the unpaid tax levied upon the United States and apportioned among the States by the eighth section of the Act of Congress approved August 5, 1861, as a debt due from the delinquent State, and have treated the same as a proper set-off against any moneys due to said State. Thus the sum of \$35,555 42 was appropriated to pay to the State of Georgia, by the Act approved March 3, 1883, but the Secretary of the Treasury declined to make such payment, because he found that on the books of the Treasury there was charged against the State of Georgia the sum of \$512,959 48, that had been for many years, certainly since the year 1868, regarded as a debt due from the State of Georgia to the United States, being the balance of the direct tax apportioned to said State under the Act above referred to and amendments thereto.

House Bill No. 3 forbids the officers of the Treasury to treat the unpaid portions of such direct tax as a debt or in any way as a set-off against any claim in favor of any State. The majority of the committee have recommended the passage of the bill. The undersigned are of the opinion that it should not pass, at least until it undergoes material modification.

Accompanying a letter of Hon. Charles J. Folger, late Secretary of the Treasury, addressed to Hon. George F. Edmunds, under date of March 29, 1884, was the following:

*Statement of the condition of the direct tax accounts of the several States and Territories and the District of Columbia, under Acts of August 5, 1861, and June 7, 1862.*

STATE OR TERRITORY.	Amount Imposed.	Amount Paid.	Fifteen per Cent Allowance.	Balance Due United States.
Alabama	\$529,313 33	\$8,491 46	-----	\$520,821 87
Arkansas	261,886 00	184,082 18	-----	77,803 82
California	254,538 67	247,941 13	-----	6,597 54
Colorado	22,905 33	1,516 89	-----	21,388 44
Connecticut	308,214 00	261,987 90	\$46,232 10	-----
Dakota	3,241 33	-----	-----	3,211 33
Delaware	74,683 33	74,683 33	*4,350 50	-----
District of Columbia	49,437 33	49,437 33	-----	-----
Florida	77,522 67	43,529 81	-----	33,992 86
Georgia	584,367 33	71,407 75	-----	512,959 58
Illinois	1,146,551 33	974,568 63	171,982 70	-----
Indiana	904,875 33	769,144 03	135,731 30	-----
Iowa	452,088 00	384,274 80	67,813 20	-----
Kansas	71,743 33	71,743 33	-----	-----
Kentucky	713,695 33	606,641 03	107,054 30	-----
Louisiana	385,886 67	268,515 12	-----	117,371 55
Maine	420,826 00	357,702 10	63,123 90	-----
Maryland	456,823 33	371,299 83	65,523 50	-----
Massachusetts	824,581 33	700,894 14	123,687 19	-----
Michigan	501,763 33	426,498 33	75,264 50	-----
Minnesota	108,424 00	92,245 40	16,278 60	-----
Mississippi	413,084 67	74,742 57	-----	338,342 10
Missouri	761,127 33	646,958 23	411,869 10	-----
Nebraska	19,312 00	19,312 00	(See note.)	-----
Nevada	4,592 67	4,592 67	-----	-----
New Hampshire	218,406 67	185,645 67	32,761 00	-----
New Jersey	450,134 00	382,614 83	67,519 17	-----
New Mexico	62,648 00	62,648 00	(See note.)	-----
New York	2,603,918 67	2,213,330 86	390,587 81	-----
North Carolina	576,194 67	386,194 45	-----	190,000 22
Ohio	1,567,089 33	1,332,025 93	235,063 40	-----
Oregon	35,140 67	35,140 67	-----	-----
Pennsylvania	1,946,719 33	1,654,711 43	292,007 90	-----
Rhode Island	116,963 67	99,419 11	17,544 56	-----

## Statement of the condition of the direct tax accounts of the several States—Continued.

STATE OR TERRITORY.	Amount Imposed.	Amount Paid.	Fifteen per Cent Allowance.	Balance Due United States.
Tennessee .....	\$669,498 00	\$387,722 06	-----	\$281,775 94
Texas .....	355,106 67	130,008 06	-----	225,098 61
Utah .....	26,982 00	-----	-----	26,982 00
Vermont .....	211,068 00	179,407 80	\$31,660 20	-----
Virginia .....	+1729,071 02	515,569 72	-----	213,501 30
West Virginia .....	+208,479 65	181,306 93	27,172 72	-----
Washington .....	7,755 33	4,268 16	-----	3,487 17
Wisconsin .....	519,688 67	429,196 68	39,346 43	51,145 56
South Carolina .....	363,570 67	377,961 30	\$14,390 63	-----

\* Included on compromise.

† Joint resolution February 25, 1867, authorized the Secretary of the Treasury to transfer \$208,479 65 of the amount originally appropriated to Virginia to the State of West Virginia.

‡ Overpaid.

## NOTE.

Nebraska:			
Amount collected .....	\$4,281 60		
Amount allowed by Act of August 7, 1882 (22 Stat., p. 314) .....	15,030 40		
			\$19,312 00
New Mexico:			
Amount allowed by Act of July 1, 1862 (12 Stat., p. 489) .....	62,648 00		

Nearly \$17,500,000 of the original \$20,000,000 levied is shown to have been paid, and something more than \$2,500,000 now stands charged against fourteen States, more than \$2,000,000 of it being against the States of Alabama, Georgia, Mississippi, North Carolina, Tennessee, Texas, and Virginia.

It is more than probable that no part of this sum of \$2,500,000 will ever be realized by the Government, except as it may be used as a set-off against claims like that of Georgia, first above referred to, and the effect of this bill (H. R. No. 3) will, in behalf of all the delinquent States, be as effective as payment, or a release.

The question is a pertinent one: Why should the delinquent States be released? The majority of the committee answer that the claim against Georgia and the other delinquent States is not a debt due from the State, making a distinction between Georgia as a political corporation, and the whole of the people of Georgia. Indeed, it is claimed that a tax can not be levied upon a State. We do not see why. There might be difficulty in many instances to make collections if the State refused to perform its duty by prompt payment. There are but few of the States that are the owners of real estate beyond that that is used in the performance of the functions of government. The United States is greatly interested in the full performance by each of the States of all the duties imposed upon them, and could not consent to throw any impediment in the way of such performance, as would be the case if the Government should seize the capitol, the prisons, the hospitals, and the colleges belonging to a non-paying State and sell them in order to realize the tax. Hence, in the case of one of the reluctant and non-performing States, the Government crosses the State line and lays hold upon the citizen, levies upon his land, and forces him to make the payment that is due from his State and that is owed by him, and payment of which is forced from him, only because his State is not in such condition as to be forced to pay, except at the expense of its usefulness as a governing factor.

The Federal Government is always forced to deal with the individual when the State refuses the performance of duty. When States were in rebellion they were forced to the resumption of duties through and by the exertions of the Government upon the individual members of the society composing and constituting the State. There is no other medium through which the Government can act. It coerces the State through the individual. Hence the machinery of the law of August 5, 1861, providing for the levy on and sale of the property of individuals and collections from them. If each of the States had been in sympathy and accord with the purposes of the Government, it is more than probable that the sections following the eighth of the Act of 1861 would never have been enacted. The Congress would have contented itself with the imposition of the tax upon the United States and "apportionment among the several States." But it was known that several of the States were hostile to the Government; that they would not pay the sum apportioned to them, and for this reason, and in our judgment only for this reason, do we find these provisions in the law that look to the collection of the sums not paid by States from the citizens of the delinquent States. We do not regard these provisions of the Act as doing the majority, as evidencing a purpose on the part of the law-makers to exempt the State from indebtedness, and impose indebtedness primarily upon the individual citizens composing the State. The practice of our Courts illustrates this principle. A debt is due from a county as a political corporation. Its officers refuse payment and refuse to levy a tax to meet a judgment rendered. The Court will send the marshal and his deputies to make levies and collections, to lay hold of the individuals composing the political corporation that is derelict in its duty.

But it is said by the report of the majority that the tax can not be a debt due from the

States to be relieved, because those States had not assumed the debt. We submit that if the power to tax exists it exists independently of consent. In the obligation to pay taxes there are none of the elements of a contract. The power to levy these taxes came from the Constitution. The language is, "The Congress shall have power to lay and collect taxes." "Direct taxes shall be apportioned among the several States." Not among the people of the several States, but among the States.

If the United States by a levy and apportionment of a direct tax among the States does not impose an obligation, a debt, upon the States, by what right do the States assume such tax and thus impose a burden on the people? The power of a State to levy taxes upon the people is limited to the necessities of its present or prospective indebtedness. These needs alone bound the power of taxation. If the States did not owe, or if it was not certain that at a future day the State would owe, various debts, then we submit the act of taking the people's money through the exercise of the taxing power would be the veriest robbery. What right has the State to assume the individual debt of A, B, or C, its citizens? If this tax was a debt from individuals, where did the several States get the power to assume it? Is the payment of the debts of citizens one of the functions of State Government? The property of individuals can only be taken for public uses, but here we find a State seizing the property of one citizen to pay what the majority say is the private debt of an individual to the Government of the United States. It can not be said that the prospect of a fifteen per cent fee can invest the State with the right to become a collecting agent and force its citizens to a payment of their debts, not by the use of the State Courts, but by the use of the taxing power of the State.

In our belief the State had no power to assume the debt of another, but being indebted to the United States, it had the power to assume the duty of the levy and collection of such sums of money as would pay the debt, and by so doing relieve the United States from the expense and responsibility of making the collections from many individuals, and by this assumption earn the fifteen or ten per cent promised in the law.

We are of the opinion that there are many reasons indicating the impolicy of attempts on the part of the United States to collect the sums due from the delinquent States. Yet a large majority of the States have paid their full apportionment. Why should those States which have refused to perform their duty receive rewards that are not bestowed upon those that were faithful to duty.

We are willing that the provisions of House Bill No. 3 should be enacted into law, but only on the condition that the States are all placed in an equally just position. If Georgia, that has not paid, is to be released, then Illinois, that has paid in full, should be repaid all she has paid of this direct tax, as well as all of her expenses incurred. The duty of prompt payment of the sums apportioned to each of the States rested upon all alike. It was Georgia's duty to pay promptly just as it was the duty of Illinois. The latter did pay and did discharge in full her indebtedness. The other utterly refused to pay, and now demands, through House Bill No. 3, that the United States shall surrender the only means by which it is practicable to force partial and long deferred payment. We do not believe there is justice in this demand; certainly not without all of the States are restored to the position occupied before the levy was made and the debt imposed.

We favor the restoration of all the States to the status occupied before the imposition of the tax, by the remission of all that part of the \$20,000,000 not paid to the States delinquent, and the return of all sums of money paid to the States making the payments, together with the percentage of ten or fifteen per cent due to the States making collections.

And as a measure that would establish proper relations of equality between the States and Territories in regard to said direct taxes levied, we report the following substitute for House Bill No. 3, and recommend its passage.

W. P. HEPBURN.  
A. A. RANNEY.  
A. X. PARKER.  
L. B. CASWELL.

Strike out from House Bill No. 3 all after the enacting clause, and insert the following words:

"That the Secretary of the Treasury be and he is hereby directed to state an account with each of the States and Territories of the United States as they existed on the fifth day of August, 1861, and with the District of Columbia, and in said statement of account he shall place to the credit of each State, Territory, and District all moneys paid by either of them into the Treasury of the United States, or all moneys that were collected by the agents of the United States, from either of them or from their citizens, as direct taxes levied upon the United States, and apportioned among the several States, under the provisions of the Act of Congress approved August 5, 1861, and the amendments thereto, and he shall also place to the credit of each State, Territory, and District such sums of money as were earned by any such States, Territories, or District, by reason of collections of said direct taxes made by them and paid into the Treasury of the United States; and said Secretary is directed to pay to each of said States, Territories, or District the sums under said accountings found to be due, and credited to them, respectively, and the said Secretary is further directed to write opposite to any charges of debt that now stands on the books of the Treasury of the United States against any State, Territory, or the District of Columbia, by reason of the direct tax above mentioned, the words 'remitted in full,' and the said unpaid portion of said direct tax is hereby remitted in full to the States, Territories, and District of Columbia, and that they are hereby released from all obligations to pay any of the unpaid portions of said tax."

Mr. Hammond. Mr. Speaker, until that report is in the possession of the House and the views of the minority have been seen by the different members, discussion upon them will not be so well understood. There are other gentlemen here who desire to speak on the general topic, or incidentally connected with it, who do not desire to discuss the particular views expressed in these papers; and hence I will reserve the time to which I am entitled, and allow those gentlemen to proceed this morning. The gentleman from Mississippi [Mr. Barksdale] wishes to speak upon the subject, as his State is interested in the matter. I will therefore yield the floor to him, reserving the remainder of my time.

[Mr. Barksdale addressed the House. His remarks will appear hereafter.]

[Mr. Hepburn addressed the committee. His remarks will appear hereafter.]

Mr. Price. Mr. Speaker, it seems to me that if this bill and its effect upon our revenues and upon the several States were thoroughly understood it would have but little support in this House. I am obliged to go briefly over the history of the matter, and I will do so as rapidly as I can, avoiding as far as possible circumstances already referred to by the gentleman from Iowa [Mr. Hepburn].

On the fifth of August, 1861, this Government found it necessary to secure a fund which it did not possess. It adopted the plan of assessing, not upon the individuals of a State, as the gentleman from Mississippi [Mr. Barksdale] has said, but upon the United States, a tax of \$20,000,000, which was apportioned among the several States of the Union. The President was authorized to divide the various States and Territories and the District of Columbia into convenient collection and assessment districts. All the paraphernalia and machinery of law were provided, and it was further enacted that where a State voluntarily assumed the payment of the debt there should be an allowance of fifteen per cent within a given time and ten per cent within another period, as the Government would thus be saved the necessity of putting the machinery of collection into motion.

Now, that law stands to-day upon the statute book unrepealed. Its constitutionality may have been doubted; but it has never yet been decided to be unconstitutional. Under it \$2,647,000 remain yet unpaid; the balance has been paid into the Treasury of the United States by a portion of the States for the good of the whole.

The Speaker. The hour devoted to this order of business has expired.

Mr. Price. Then I shall have the floor when the subject comes up again.

The Speaker. The gentleman from Wisconsin [Mr. Price] will then be entitled to the floor.

Forty-ninth Congress, first session. House of Representatives. Report No. 35.

### CLAIM OF THE WAR TAXES.

January 19, 1886—Referred to the House Calendar, and ordered to be printed.

Mr. Hammond, from the Committee on the Judiciary, submitted the following

#### REPORT.

[To accompany bill H. R. 3.]

The Committee on the Judiciary, to whom was referred bill H. R. 3, have considered the same, and submit the following report:

By an Act of Congress approved March 3, 1883, the Secretary of the Treasury was required to pay to the State of Georgia \$35,555 42 (see 22 U. S. Stat., 485). It was not paid because of a decision of Mr. Lawrence, First Comptroller of the Treasury, placing it to the credit of the State on the books of the Treasury against a sum charged there against the State as its quota of a direct tax levied during the late war.

Bill H. R. 4703, first session, Forty-eighth Congress, was to compel payment, that decision to the contrary notwithstanding. The Judiciary Committee, by Mr. Hammond, on the eleventh of March, 1884, reported in favor of the passage of that bill. (See Report No. 752, first session, Forty-eighth Congress.)

On the second of May, 1884, Mr. Barksdale of Mississippi introduced and had referred to said committee, a bill (H. R. 6867) to authorize settlements with any State, and directing that "in such settlement and adjustment no charge shall be made, or if made, shall be valid by way of set-off or otherwise against any State on account of the direct war tax laid by Congress by an Act approved August 5, 1861."

On the twentieth of May, 1884, said committee, by Mr. Hammond, reported thereon as follows:

The obstacles in the way of paying claims of States against the General Government, growing out of the charge of the direct war tax against the States on the books of the Treasury Department, and the opinions by Treasury officials thereon, as well as the reasons why those obstacles should be removed, are set forth in Report No. 752 of this session of Congress in the Georgia case, made on the —th of March, 1884.

Your committee believe that the relief therein recommended for that State should be general as to all the States against which such set-off of war taxes is being or may be claimed, and report accordingly. They, however, report a substitute for bill H. R. 6867, and recommend the passage of the substitute herewith submitted.

The substitute so reported was this:

That it shall not be lawful for the Secretary of the Treasury, or other person charged with or concerned in the payment of any sum of money from the United States to any State of the Union, to withhold the same from such State, or its duly authorized agent, by reason of any claim that such State is bound for any part of the war tax levied by the Act of August fifth, eighteen hundred and sixty-one, or any Act amendatory thereof, or to treat the said tax in any way as a set-off against any claim in favor of any State.

SEC. 2. That all laws, or parts of laws, and all rulings or decisions of any department of the Government, or of any officer thereof, inconsistent with the foregoing section, be and are hereby repealed and annulled.

This report was No. 1658, and the substitute bill H. R. 7082, first session, Forty-eighth Congress. The substituted bill and Georgia's separate bill both remained on the calendar, but were never reached in the last Congress. The present bill (H. R. 3) is a copy of said substitute.

This committee adopt the reasoning of the former Judiciary Committee in those reports.

While the former was on the Georgia case only, it covered all the States in like condition. Omitting, therefore, only the introductory parts already substantially given, your committee adopts the language of that report as follows:

A little history will cast much light upon the subject. The Act of August 5, 1861, provided for collectors and assessors, and for lists of property "from all persons owning, possessing, and having the care or management of any lands," etc., for the purpose of taxing the same. (Sections fourteen to twenty-nine, inclusive.)

Section thirty-three enacted that "the taxes so assessed shall be and remain a lien upon all lands and other real estate of the individuals who may be assessed for the same" for two years.

Section fifty-two provided that as soon as Federal authority could be restored in the Southern States, the tax should be collected "from the persons residing or holding property or stocks therein."



The eighth section enacted:

"That a direct tax of twenty millions of dollars be and is hereby annually laid upon the United States, and the same shall be and is hereby apportioned to the States, respectively, in manner following: \* \* \* To the State of Georgia, five hundred and eighty-four thousand three hundred and sixty-seven and one third dollars."

To the other States according to their populations, respectively. But so far from proposing to tax the States as such, by section thirteen, it expressly exempted from such taxes "all property, of whatever kind \* \* \* belonging to the United States or any State," etc.

Section fifty-three enacted "that any State or Territory and the District of Columbia may lawfully assume, assess, collect, and pay into the Treasury of the United States the direct tax, or its quota thereof, imposed by this Act upon the State, Territory, or the District of Columbia, in its own way and manner, by and through its own officers, assessors, and collectors," with deduction of fifteen per cent if paid by the thirtieth of June, and of ten per cent if paid by the last of September of the tax year.

It further provided, "that whenever notice of the intention to make such payment by the State, Territory, and the District of Columbia shall have been given to the Secretary of the Treasury," then the United States shall cease trying to collect by its officers, unless such State should "be in default." In that event the Secretary of the Treasury "was to collect all or any part of said direct tax the same as though said State, Territory, or District had not given notice nor assumed to levy, collect, and pay said taxes or any part thereof (section forty-six)."

Said section fifty-three further provided:

"That the amount of direct tax apportioned to any State, Territory, or the District of Columbia, shall be liable to be paid and satisfied in whole or in part by the release of such State, Territory, or District, duly executed to the United States, of any liquidated and determined claim of such State, Territory, or District, of equal amount against the United States, with the same abatement as if it were paid in money." (See 12 U. S. Stat., 292-312.)

Another law of June 7, 1862, applied only to the States in "insurrection and rebellion." It made the tax upon each parcel of land in each State chargeable with the tax due upon that parcel, plus fifty per cent, and made a lien on the lands therefor. It provided that "the owner or owners of said lots or parcels of lands" might discharge them by paying within a fixed time.

It provided for commissions to collect the tax in those States, to sell the lands of defaulting owners, etc., but was silent as to any assumption of the tax by those States. (12 U. S. Stat., 422-426.)

From time to time Congress passed other Acts as to direct taxes, but none of them seem to have any bearing upon this question. For instance, that of May 13, 1862, enlarged the release proviso to include certain expenditures of the States in sending troops to the war, etc. (*Ib.*, 384); that of July 1, 1862, limited the collection to one year, till April, 1865 (*Ib.*, 489), and that of February 6, 1863, provided for sales of lands and redemption by their "owners" (*Ib.*, 640).

All the States, etc., "formally assumed the payment of the tax except Delaware, the Territory of Colorado, and the eleven insurrectionary States." (Report Commissioner Internal Revenue, 1870. Sen. Ex. Doc. 24, first session Forty-sixth Congress, 236.)

The collection of them was suspended as to unpaid sums by Congress.

In 1868 an account was opened upon the books of the Treasury Department against the State of Georgia for her said quota of the direct tax, though Georgia had in no way assumed to pay the same. We stop not now to discuss why that was done, but proceed with the history.

The Western and Atlantic Railroad belongs to Georgia. The State bought for said road some of the rolling stock which had been used by the United States at the South in prosecuting the late war. This property was paid for in cash, the last payment being on the sixteenth of October, 1867. By an Act approved the third of March, 1877, because of alleged overvaluation of said property when sold, Congress authorized the reopening of said account and adjustment thereof. The Act required:

"That when said claims shall have been adjusted in pursuance of the provisions of this Act, the Secretary of War be and he is hereby authorized to issue his warrant on the Treasury of the United States to the Governor of Georgia or his order, for the amount of money it is found ought to be refunded to said railroad on account of said settlement." (19 U. S. Stat., 402-3.)

The amount found to be due the State on that account was \$199,038 58. (See Q. M. Gen.'s Report, 1877, p. 120.)

So far as we are advised, no question of set-off was then made. Certainly the money was paid in cash.

On the third of March, 1879, Congress enacted in the Sundry Civil Bill:

"That the Secretary of the Treasury be and he is hereby directed to pay to the State of Georgia seventy-two thousand two hundred and ninety-six dollars and ninety-four cents, for advances made to the United States for the suppression of hostilities by the Creek, Seminole, and Cherokee Indians, in 1835, 1836, 1837, and 1838, and that said sum be paid out of any money in the Treasury not otherwise appropriated."

When payment was requested, the Third Auditor called attention to this direct tax account, and asked information. Mr. Sherman, Secretary of the Treasury, referred to Hon. A. G. Porter, First Comptroller, "whether said amount should be set off against the amount of the direct tax under Act of August 5, 1861, and Acts amendatory thereto,

apportioned to the State." He wrote an opinion. In stating the facts, after giving a synopsis of the Acts of 1861 and of June, 1862, *ante*, he added: "The State of Georgia never assumed the amount apportioned to that State, or any part of it." And then, after stating the question, he said:

"If the sum apportioned is a debt owing by the State of Georgia as a political corporation, then it may be assumed that it ought to be so credited. If, however, it is a debt owing by the persons within that State, whose lands have been taxed, and not by the State itself, then payment ought not to be withheld."

He then called attention to the decision of Mr. McCulloch, Secretary of the Treasury in 1866, as to Texas, and said:

"Mr. McCulloch treated the apportionment of the direct tax as a debt owing by citizens of Texas belonging to the class whose property was taxed, and not as a debt owing by the State in its political capacity."

Proceeding, he said:

"The privilege of a State to assume implies that the debt before the assumption was not its own. Before the adoption of the Constitution, the person whose property was charged with the tax owed the tax to the State, because the State imposed it and levied and collected it. Since the adoption of that instrument, the United States has imposed the tax, and has itself levied and collected it. The obligation of the citizen is therefore to the Union, and not to the State, and he and not the State is the debtor."

Enforcing his view by various citations, urging that any other would leave the States with power to thwart the collection of taxes, in an emergency, directly from the people, and declaring that this direct tax of 1861 could still be collected when the United States wishes, he concluded:

"It follows, therefore, that it is my duty to direct that the sum appropriated to the State of Georgia shall not be credited as upon a debt owing by that State to the United States, but shall be paid at once to the State."

In answer to a resolution by the Senate, this decision was transmitted, "with accompanying papers," to the Senate, by Secretary Sherman, on May 24, 1879. (See Senate Ex. Doc. No. 24, first session Forty-sixth Congress.)

The "accompanying papers" show that, before this opinion was made, attention was called to the fact that Kansas, Missouri, West Virginia, and other States had been credited with various sums there stated. Mr. Porter paid no attention to them, because (as we presume) they had assumed their respective quotas, and thus made them a debt against the States as such. Subsequently, in May, 1881, Mr. Lawrence, the successor of Mr. Porter, decided the Kansas case. His opinion contains thirty-three headnotes and twenty-five sub-headnotes. Those which are material, in our opinion, to the present discussion, are as follows:

"In May, 1879, it was decided by the then First Comptroller that the direct tax apportioned to the State of Georgia by the Acts of August 5, 1861, and of June 7, 1862, was not a debt of the corporate State, which had not by an Act assumed it; and that although the tax had not been paid, yet money due from the United States to the State must be paid to the latter, and could not be used by way of set-off or in discharge of any part of the claim for direct taxes. (S. Ex. Doc. No. 24, first session Forty-sixth Congress.) That conclusion is correct in law. The decision of that question was affected somewhat by the Act of June 7, 1862, not applicable to the question now present. But the same result would be reached without reference to it. Under the Constitution, Congress cannot levy or enforce the collection of a tax or assessment on a corporate State which has not assumed it. The National Government does not operate on States in the collection of revenues, but on persons or property, or both. (2 Lawrence, Compt. Dec., 310.)

He further held that his predecessors had decided that Kansas had voluntarily assumed her quota of the tax; that he was bound by that decision, and that therefore a sum appropriated to Kansas should not be paid, but must be placed to her credit against said assumed debt. (*Ib.* 324.)

The decision of Lawrence, Comptroller, made twelfth May, 1883, refusing to pay this money to Georgia, has thirty headnotes. We do not believe that we need differ with any of them but the sixth, seventh, tenth, and nineteenth. We call attention to them, and the eighth, also. They are:

"6. The First Comptroller had jurisdiction and authority in May, 1868, to certify a balance as due from the State of Georgia to the United States, for the quota of direct taxes apportioned to said State by the Direct Tax Act of August 5, 1861. (12 Stat., 294.)

"7. The Comptroller now in office cannot inquire whether the Comptroller in office in May, 1868, who then certified a balance due from the State of Georgia to the United States on account of direct taxes, had before him *sufficient evidence* to authorize such action, or whether on such evidence as he then had *he properly construed the law*. The Judicial Courts or Congress can furnish the only relief in such case, if the Comptroller erred in charging the State with such liability.

"8. Congress may by law require the accounting officers of the Treasury Department to set off a claim of the United States against a State, when such State demands payment of a claim due to it from the United States, although in such case Congress might not under the Constitution charge such corporate State with a liability and enforce its payment in any other mode except by such set-off.

"9. The legislation of Congress in relation to the *quota* of direct taxes apportioned to Missouri and West Virginia seems in principle to recognize the correctness of the judgment of the First Comptroller, by which, in May, 1868, he certified a balance as due from

the State of Georgia to the United States for its *quota* of the direct tax apportioned to that State by the Act of August 5, 1861.

"10. The Direct Tax Act of August 5, 1861 (12 Stat., 311, Section 53), provides a special statutory mode of paying the quota of tax apportioned to any State by declaring that it 'shall be liable to be paid' by set-off 'of any liquidated and determined claim of such State \* \* \* against the United States.'

"19. The balance certified by the First Comptroller, May 29, 1868, as due to the United States from the State of Georgia, for its quota of direct tax, under the Act of August 5, 1861, has not been in any form set aside or rendered inoperative."

First—Did any Comptroller ever, in any fair sense, try to raise a debt against Georgia for this tax? Mr. Lawrence, in this opinion, stated the facts in this language:

"May 11, 1868, by report No. 55448 the Fifth Auditor 'examined and adjusted an account between the United States and the State of Georgia,' and found 'that the sum of \$584,367 33 is due from said State to the United States \* \* \* for amount of direct tax imposed and apportioned by the eighth section of the Direct Tax Act of August 5, 1861, 'amount to be debited to the State of Georgia on the books of the Register of the Treasury.'"

"May 29, 1868, the First Comptroller certified to the Register a balance due and payable as stated in the above report, and it was accordingly charged, on the Register's books, as a debt due from the State of Georgia to the United States."

"September 3, 1874, the Fifth Auditor, by Report No. 5, adjusted an account between the United States and T. P. Robb, Samuel A. Pancoast, and John C. Bates, Commissioners of Direct Tax for the State of Georgia, from August 1, 1865, to December 15, 1866, and found them chargeable with 'amount of direct tax laid upon the State of Georgia by Act of Congress approved August 5, 1861, \$584,367 33.' The report shows costs chargeable to the State \$649 72, and finds the Commissioners entitled to credit for salaries and expenses \$9,835 06, amount of taxes remaining uncollected \$501,939 86, amount refunded to taxpayers on account of collections improperly made \$46 17, and cash deposited \$71,407 75 covered into the Treasury by miscellaneous warrants numbered and dated in 1866, respectively, 747 March 31, 524 June 25, 697 June 30, 596 September 29, and 726 December 31."

"January 9, 1875, the Acting First Comptroller certified a balance of \$1,788 22 'due to the United States from the Commissioners, as stated in the above report.' The amount of these warrants was placed to the credit of the State of Georgia in the Register's office on said account for direct taxes."

In May, 1868, the amount fixed by the statute as the quota of Georgia was charged to her, and afterwards, in 1874, the same amount was charged by the same office to the United States Commissioners of direct tax for the State of Georgia, and they were credited with various sums collected and uncollected, and among others an "amount refunded to taxpayers on account of collections improperly made, \$46 17." The dealing with "taxpayers" showed that the State was not considered the debtor. The "taxpayers" owed only if Georgia had not assumed the debt. Taking the two accounts together, it seems plain that the account was so stated only for convenience of keeping the books of the Department. Any other view makes us to assume that the officer raising the account acted in ignorance of the law. The First Comptroller could have no jurisdiction under the Act of 1861 to state an account against any State which had not assumed the debt.

It is true, as stated in the tenth headnote, *supra*, that said Act provides a special statutory mode of paying the quota of tax apportioned to any State, by declaring that it "shall be liable to be paid" by set-off "of any liquidated and determined claim of such State \* \* \* against the United States." But more is true. That "special statutory mode of paying" is in the words which Mr. Lawrence omitted from the quotation, viz.: "by the release of such State \* \* \* duly executed to the United States." By such release, with a view to such credit, the State consents to the account against it, and thus assumes the debt. It was by such a release that Missouri was credited (see Act of July 17, 1862, in said Senate Ex. Doc. 24, p. 197). The same is true as to West Virginia, under the Act of February 25, 1867 (*Ib.*, 207). They assumed the debt and sought to have certain credits allowed. Georgia did not assume it, and therefore nothing in their cases authorizes the raising of such an account against Georgia.

Mr. Lawrence admits that this action of his predecessor is the only obstacle, and that it is not in the way of payment if it was "unauthorized or void." If no statute authorized it, it was "unauthorized." No statute created such a debt except by the consent of the State, and the State did not consent. There is no pretense that the First Comptroller found such fact upon inquiry. It is only stated that he did an act from which it is inferred that he found such fact. But that does not follow; for he may have raised the account for other reasons. Congress cannot make such a debt against a State without its consent. There was no consent, and therefore the act raising such account, when considered as to whether that Act made Georgia the debtor, is "void."

We admit that "all claims or demands whatever by the United States \* \* \* shall be settled and adjusted in the Department of the Treasury" (Rev. Stat., § 236). But there must be a claim or demand to adjust. The statute declared there could be none against a State till it assented, and Georgia never assented. So, while the Second Comptroller must "examine all accounts" settled by the Auditors (*Ib.*, 273), and the First Auditor "must examine all accounts accruing in the Treasury Department" (*Ib.*, 277); there must be a debtor, by law, before an account can exist for examination.

It is useless to examine whether Congress "may so far declare a State indebted to the United States as to secure satisfaction of the debt by withholding from it by set-off, as in

this case, money admitted to be due from the United States to such State," for Congress has never made such declaration. Nor need we discuss whether Congress had power "to enforce the collection of tax against the corporate property of the State," though Mr. Lawrence said "the power to do so in time of war seems undoubted." Mr. Thaddeus Stevens, when he presented the direct tax bill to Congress, in the midst of war, and to raise means promptly to prosecute the war, said "Congress has no constitutional power to assess taxes upon a State. It must assess it upon the individual" (Sen. Ex. Doc. 24, ante, page 41). And the Act levying the tax expressly exempted all State property. It sought not to exercise such power if it existed.

Suppose we admit that Congress might legislate as the eighth headnote declares; Congress has not so legislated in this case. On the contrary, an effort to have it so legislate was defeated. On the sixth of December, 1882, the bill was reached and taken up in the House.

Mr. Holman, as soon as the report had been read, said:

"The question is presented whether or not this sum should be paid by the United States directly to the State of Georgia, or whether it shall be allowed as a credit to that State on the amount of direct tax apportioned against the State under the Act of August 5, 1861."

Mr. Turner replied:

"The direct tax is a tax due by the people of the State, not by the State in its corporate or aggregate capacity, etc." (Congressional Record, vol. 59, page 59.)

The issue thus made was debated *pro* and *con*. Mr. Holman moved to add to the bill—"Provided, however, that the said sum, \$35,555 42, shall not be paid by the Secretary of the Treasury until the sum due the United States of direct taxes apportioned to the State of Georgia under the Act entitled 'An Act to provide increased revenue from imports to pay the interest on the public debt, and for other purposes,' approved August 5, 1861, shall have been adjusted. (*Ib.*, 65.)

A motion to strike out the enacting clause was lost; the ayes were fifty-two and the nays were seventy-six.

Mr. Holman's proposed amendment was also lost by ayes fifty-three to nays ninety. An effort to adjourn was lost by eighty nays to fifty yeas. Upon the passage of the bill the yeas and nays were demanded, and it was passed by yeas ninety-six to nays eighty. (*Ib.*, 68.) The report was read in the Senate, and the bill passed without debate. (Congressional Record, vol. 62, pp. 3690, 3670-3672.)

Again, we think the payments made to the State of Georgia, aforesaid, were at least waivers of any such claim by the United States as is here asserted, and did set aside and render inoperative said certification of the account in May, 1868, if it ever were operative for the purpose claimed.

Mr. Lawrence does not claim that the decision of his predecessor was correct. He seems to admit, in the opinion, that he would reverse it if he thought he could. He really suggests this legislation in his annual report for the fiscal year ending June 30, 1883. His language was this:

"In 1868 the First Comptroller then in office certified balances due to the United States from several States, respectively, for direct taxes due and unpaid, under the direct tax Act of August 5, 1861 (12 Stat., 292), and such States were accordingly debited on the books in the office of the Register of the Treasury. It may well be doubted whether any corporate State was properly so charged, but as the Comptroller has jurisdiction of the subject-matter, his action, even if erroneous, cannot be treated as void by the Comptroller now in office. The result is, that money due, or which may become due, from the United States to any State so charged, to the extent of the amount so charged, cannot be paid to the State, but, by usage and law is to be applied by way of set-off. It may thus happen that some States will in this mode pay the direct tax, while others indebted in the same form will continue so indebted, and hence there will seem to be inequality, if not injustice, in the dealings between the United States and such States. The money appropriated by the Act of March 3, 1883 (22 Stat., 485), 'to refund to the State of Georgia certain money expended by said State for the common defense in 1877,' was withheld and applied by way of set-off on the sum charged against said State for direct taxes. If it be the purpose of Congress that moneys due to such States shall be paid, it is respectfully suggested that provision should be made authorizing payment without reference to the charge against any such States."

Suppose this money cannot be paid, and that Mr. Lawrence is right that the judicial Courts or Congress can furnish the only relief in such case, if the Comptroller erred in charging the State with such liability; still this bill should pass, and for that very reason. The United States admits this indebtedness to Georgia; it admits Georgia is not in debt to the United States, and it has formally undertaken to pay this debt to Georgia. Why should she be remitted to the Court of Claims? We see no reason therefor.

By reason of a real or supposed obstacle unknown to Congress when the bill for payment was passed, the debt of the United States has not been paid. An officer of the United States erroneously put that obstacle in the way. It should be removed, unless there is some other reason to the contrary.

Is there any? There is none, unless the United States should refuse to pay simply because Georgia did not pay the direct tax. Laying aside the question whether this tax Act was operative within the States with which the United States was then at war, a refusal on that ground seems to be unjust for these and other reasons: Georgia does not owe the debt to the United States, but, at most, parts of it are due from certain of her citizens



respectively. Only those citizens who in 1861 owned the lands taxed owe the taxes, and no property is bound for the tax except those lands. If Secretary McCulloch was right in his Texas decision, *ante*, and Mr. Porter was right in the Georgia case, *ante*, Georgia could not, after a fixed day in 1862, assume the debts, if she wished. Georgia cannot collect these taxes without such assumption.

It does not seem just to collect from Georgia, as a State, any part of a debt she does not owe, nor from her, as representing the land owners of 1861, by withholding money which belongs to Georgia as a State, and if, as representing any citizens, as representing all her citizens, whether owning lands in 1861, or anything else at any time.

It does not seem that the United States will ever collect those direct taxes of 1861. But could it and should it determine to do so, equal collections should be made from all the Southern States simultaneously. To make Georgia pay indirectly by withholding from her admitted dues from the United States, has not been the policy of the Government, as appears from the payments already of over a quarter of a million of dollars to her in cash since said account was raised in 1868. We do not think it should become the policy of the Government. Therefore, we recommend that the bill do pass.

The committee therefore recommend the passage of the bill.

Forty-ninth Congress, first session. House of Representatives. Report 35, part 2.

### WAR TAXES OF 1861.

January 29, 1886—Referred to the House Calendar and ordered to be printed.

Mr. Hepburn, from the Committee on the Judiciary, submitted the following as the

#### VIEWS OF THE MINORITY.

[To accompany bill H. R. 3.]

The officers of the Treasury are required to, and do, set off sums of money due from the United States to any State against any sums that may be due from the State.

These officers have for many years regarded the unpaid tax levied upon the United States and apportioned among the States by the eighth section of the Act of Congress approved August 5, 1861, as a debt due from the delinquent State, and have treated the same as a proper set-off against any moneys due to said State. Thus the sum of \$35,555 42 was appropriated to pay to the State of Georgia, by the Act approved March 3, 1883, but the Secretary of the Treasury declined to make such payment, because he found, that on the books of the Treasury, there was charged against the State of Georgia the sum of \$512,959 48, that had been for many years, certainly since the year 1868, regarded as a debt due from the State of Georgia to the United States, being the balance of the direct tax apportioned to said State under the Act above referred to, and amendments thereto.

House Bill No. 3 forbids the officers of the Treasury to treat the unpaid portions of such direct tax as a debt or in any way as a set-off against any claim in favor of any State. The majority of the committee have recommended the passage of the bill. The undersigned are of the opinion that it should not pass, at least until it undergoes material modification.

Accompanying a letter of the Hon. Charles J. Folger, late Secretary of the Treasury, addressed to the Hon. George F. Edmunds, under date of March 29, 1884, was the following:

Statement of the Condition of the Direct Tax Accounts of the several States and Territories and the District of Columbia, under Acts of August 5, 1861, and June 7, 1862.

STATE OR TERRITORY.	Amount Imposed.	Amount Paid.	Fifteen per Cent Allowance.	Balance Due United States.
Alabama	\$529,313 33	\$8,491 46		\$520,821 87
Arkansas	261,886 00	184,082 18		77,803 82
California	254,538 67	247,941 13		6,597 54
Colorado	22,905 33	1,516 89		21,388 44
Connecticut	308,214 00	261,987 90	\$46,232 10	
Dakota	3,241 33			3,241 33
Delaware	74,683 33	74,683 33	*4,350 50	
District of Columbia	49,437 33	49,437 33		
Florida	77,522 67	43,529 81		33,992 86
Georgia	584,367 33	71,407 75		512,959 58
Illinois	1,146,551 33	974,568 63	171,982 70	
Indiana	904,875 33	769,144 03	135,731 30	
Iowa	452,088 00	384,274 80	67,813 20	
Kansas	71,743 33	71,743 33		
Kentucky	713,695 33	606,641 03	107,054 30	
Louisiana	385,886 67	268,515 12		117,371 55
Maine	420,826 00	357,702 10	63,123 90	
Maryland	436,823 33	371,299 83	65,523 50	
Massachusetts	824,581 33	700,894 14	123,687 19	
Michigan	501,763 33	426,498 83	75,264 50	
Minnesota	108,424 00	92,245 40	16,278 60	
Mississippi	413,084 67	74,742 57		338,342 10
Missouri	761,127 33	646,958 23	411,869 10	
Nebraska	19,312 00	19,312 00	(See note.)	
Nevada	4,592 67	4,592 67		
New Hampshire	218,406 67	185,645 67	32,761 00	
New Jersey	450,134 00	382,614 83	67,519 17	
New Mexico	62,648 00	62,648 00	(See note.)	
New York	2,603,918 67	2,213,330 86	390,587 81	
North Carolina	576,194 67	386,194 45		190,000 22
Ohio	1,567,089 33	1,332,025 98	235,063 40	
Oregon	35,140 67	35,140 67		
Pennsylvania	1,946,719 33	1,634,711 43	292,007 90	
Rhode Island	116,963 67	99,419 11	17,544 56	
Tennessee	669,498 00	387,722 06		281,775 94
Texas	355,106 67	130,008 06		225,098 61
Utah	26,982 00			26,982 00
Vermont	211,068 00	179,407 80	31,660 20	
Virginia	†729,071 02	515,569 72		213,501 30
West Virginia	†208,479 65	181,306 93	27,172 72	
Washington	7,755 33	4,268 16		3,487 17
Wisconsin	519,688 67	429,196 68	89,346 43	51,145 56
South Carolina	363,570 67	377,961 30	†14,390 63	

\* Included on compromise.

† Joint resolution February 25, 1867, authorized the Secretary of the Treasury to transfer \$208,479 65 of the amount originally appropriated to Virginia to the State of West Virginia.

‡ Overpaid.

#### NOTE.

Nebraska:		
Amount collected	\$4,281 60	
Amount allowed by Act of August 7, 1882 (22 Stat., p. 314)	15,030 40	\$19,312 00
New Mexico:		
Amount allowed by Act of July 1, 1862 (12 Stat., p. 489)		62,648 00

Nearly \$17,500,000 of the original \$20,000,000 levied is shown to have been paid, and something more than \$2,500,000 now stands charged against fourteen States, more than \$2,000,000 of it being against the States of Alabama, Georgia, Mississippi, North Carolina, Tennessee, Texas, and Virginia.

It is more than probable that no part of this sum of \$2,500,000 will ever be realized by the Government, except as it may be used as a set-off against claims like that of Georgia, first above referred to, and the effect of this bill (H. R. No. 3) will, in behalf of all of the delinquent States, be as effective as payment, or a release.

The question is a pertinent one: Why should the delinquent States be released? The majority of the committee answer that the claim against Georgia and the other delinquent States is not a *debt* due from the *State*, making a distinction between Georgia as a political corporation, and the whole of the people of Georgia. Indeed, it is claimed that a tax cannot be levied upon a State. We do not see why. There might be difficulty in many instances to make collections if the State refused to perform its duty by prompt payment. There are but few of the States that are the owners of real estate beyond that that is used in the performance of the functions of government. The United States is greatly interested in the full performance by each of the States of all the duties imposed upon them, and could not consent to throw any impediment in the way of such performance, as would be the case if the Government should seize the capitol, the prisons, the hospitals, and the colleges belonging to a non-paying State and sell them in order to realize the tax. Hence, in the case of one of the reluctant and non-performing States, the Government crosses the State line and lays hold upon the citizen, levies upon his land, and forces him to make the payment that is due from his State, and that is owed by him, and payment of which is forced from him, only because his State is not in such condition as to be forced to pay, except at the expense of its usefulness as a governing factor.

The Federal Government is always forced to deal with the individual when the State refuses the performance of duty. When States were in rebellion they were forced to the resumption of duties through and by the exertions of the Government upon the individual members of the society composing and constituting the State. There is no other medium through which the Government can act. It coerces the State through the individual. Hence the machinery of the law of August 5, 1861, providing for the levy on and sale of the property of individuals and collections from them. If each of the States had been in sympathy and accord with the purposes of the Government, it is more than probable that the sections following the eighth of the Act of 1861 would never have been enacted. The Congress would have contented itself with the imposition of the tax upon the United States and "apportionment among the several States." But it was known that several of the States were hostile to the Government; that they would not pay the sum apportioned to them, and for this reason, and in our judgment only for this reason, do we find these provisions in the law that look to the collection of the sums not paid by the States from the citizens of the delinquent States. We do not regard these provisions of the Act as do the majority, as evidencing a purpose on the part of the law-makers to exempt the State from indebtedness and impose indebtedness primarily upon the individual citizens composing the State. The practice of our Courts illustrates this principle: A debt is due from a county as a political corporation. Its officers refuse payment and refuse to levy a tax to meet a judgment rendered. The Court will send the Marshal and his deputies to make levies and collections, to lay hold of the individuals composing the political corporation that is derelict in its duty.

But it is said by the report of the majority that the tax cannot be a debt due from the States to be relieved, because those States had not assumed the debt. We submit that if the power to tax exists, it exists independently of consent. In the obligation to pay taxes there are none of the elements of a contract. The power to levy these taxes came from the Constitution. The language is, "The Congress shall have power to lay and collect taxes." "Direct taxes shall be apportioned among the several States." Not among the people of the several States, but among the States.

If the United States by a levy and apportionment of a direct tax among the States does not impose an obligation, a debt, upon the States, by what right do the States assume such tax and thus impose a burden on the people? The power of a State to levy taxes upon the people is limited to the necessities of its present or prospective indebtedness. These needs alone bound the power of taxation. If the States did not owe, or if it was not certain that at a future day the State would owe, various debts, then we submit the act of taking the people's money through the exercise of the taxing power would be the veriest robbery. What right has a State to assume the individual debt of A, B, or C, its citizens? If this tax was a debt from individuals, where did the several States get the power to assume it? Is the payment of the debts of citizens one of the functions of State government? The property of individuals can only be taken for public uses, but here we find a State seizing the property of one citizen to pay what the majority say is the private debt of an individual to the Government of the United States. It cannot be said that the prospect of a fifteen per cent fee can invest the State with the right to become a collecting agent and force its citizens to a payment of their debts, not by the use of the State Courts, but by the use of the taxing power of the State.

In our belief, the State had no power to assume the debt of another, but being indebted to the United States, it had the power to assume the duty of the levy and collection of such sums of money as would pay the debt, and by so doing relieve the United States from the expense and responsibility of making the collections from many individuals, and by this assumption earn the fifteen or ten per cent promised in the law.

We are of the opinion that there are many reasons indicating the impolicy of attempts on the part of the United States to collect the sums due from the delinquent States. Yet a large majority of the States have paid their full apportionment. Why should those States which have refused to perform their duty receive rewards that are not bestowed upon those that were faithful to duty?

We are willing that the provisions of House Bill No. 3 should be enacted into law, but only on the condition that the States are all placed in an equally just position. If Georgia, that has not paid, is to be released, then Illinois, that has paid in full, should be repaid all she has paid of this direct tax, as well as all of her expenses incurred. The duty of prompt payment of the sums apportioned to each of the States rested upon all alike. It was Georgia's duty to pay promptly, just as it was the duty of Illinois. The latter did pay, and did discharge in full her indebtedness. The other utterly refused to pay, and now demands, through House Bill No. 3, that the United States shall surrender the only means by which it is practicable to force partial and long deferred payment. We do not believe there is justice in this demand; certainly not without all of the States are restored to the position occupied before the levy was made and the debt imposed.

We favor the restoration of all of the States to the status occupied before the imposition of the tax by the remission of all that part of the \$20,000,000 not paid to the States delinquent, and the return of all sums of money paid to the States making the payments, together with the percentage of ten or fifteen per cent due to the States making collections.

And as a measure that would establish proper relations of equality between the States and Territories, in regard to said direct taxes levied,

we report the following substitute for House Bill No. 3, and recommend its passage.

W. P. HEPBURN.  
A. A. RANNEY.  
A. X. PARKER.  
L. B. CASWELL.

Strike out from House Bill No. 3 all after the enacting clause, and insert the following words:

"That the Secretary of the Treasury be and he is hereby directed to state an account with each of the States and Territories of the United States as they existed on the fifth day of August, 1861, and with the District of Columbia, and in said statement of account, he shall place to the credit of each State, Territory, and District all moneys paid by either of them into the Treasury of the United States, or all moneys that were collected by the agents of the United States, from either of them or from their citizens, as direct taxes levied upon the United States, and apportioned among the several States, under the provisions of the Act of Congress approved August 5, 1861, and the amendments thereto, and he shall also place to the credit of each State, Territory, and District such sums of money as were earned by any such States, Territories, or District, by reason of collections of said direct taxes made by them and paid into the Treasury of the United States; and said Secretary is directed to pay to each of said States, Territories, or District the sums under said accountings found to be due, and credited to them, respectively, and the said Secretary is further directed to write opposite to any charges of debit that now stand on the books of the Treasury of the United States against any State, Territory, or the District of Columbia, by reason of the direct tax above mentioned, the words 'remitted in full,' and the said unpaid portion of said direct tax is hereby remitted in full to the States, Territories, and District of Columbia, and they are each hereby released from all obligation to pay any of the unpaid portions of said tax."

### EXHIBIT No. 37.

Forty-ninth Congress, first session. House of Representatives. Report 35, part 2.

### WAR TAXES OF 1861.

January 29, 1886—Referred to the House Calendar and ordered to be printed.

Mr. Hepburn, from the Committee on the Judiciary, submitted the following as the

#### VIEWS OF THE MINORITY.

[To accompany bill H. R. 3.]

The officers of the Treasury are required to, and do, set off sums of money due from the United States to any State against any sums that may be due from the State.

These officers have for many years regarded the unpaid tax levied upon the United States and apportioned among the States by the eighth section of the Act of Congress, approved August 5, 1861, as a debt due from the delinquent State, and have treated the same as a proper set-off against any moneys due to said State. Thus the sum of \$35,555 42 was appropriated to pay to the State of Georgia, by the Act approved March 3, 1883, but the Secretary of the Treasury declined to make such payment, because

he found that on the books of the Treasury there was charged against the State of Georgia the sum of \$512,959 48, that had been for many years, certainly since the year 1868, regarded as a debt due from the State of Georgia to the United States, being the balance of the direct tax apportioned to said State under the Act above referred to, and amendments thereto.

House Bill No. 3 forbids the officers of the Treasury to treat the unpaid portions of such direct tax as a debt or in any way as a set-off against any claim in favor of any State. The majority of the committee have recommended the passage of the bill. The undersigned are of the opinion that it should not pass, at least until it undergoes material modification.

Accompanying a letter of the Hon. Charles J. Folger, late Secretary of the Treasury, addressed to the Hon. George F. Edmunds, under date of March 29, 1884, was the following:

*Statement of the Condition of the Direct Tax Accounts of the several States and Territories and the District of Columbia, under Acts of August 5, 1861, and June 7, 1862.*

STATE OR TERRITORY.	Amount Imposed.	Amount Paid.	Fifteen per Cent Allowance.	Balance Due United States.
Alabama.....	\$529,313 33	\$8,491 46	-----	\$520,821 27
Arkansas.....	261,886 00	184,082 18	-----	77,803 82
California.....	254,538 67	247,941 13	-----	6,597 54
Colorado.....	22,905 33	1,516 89	-----	21,388 44
Connecticut.....	308,214 00	261,981 90	\$46,232 10	-----
Dakota.....	3,241 33	-----	-----	3,241 33
Delaware.....	74,683 33	* 74,683 33	* 4,350 50	-----
District of Columbia.....	49,537 33	49,437 33	-----	-----
Florida.....	77,522 67	43,529 81	-----	33,992 86
Georgia.....	584,367 33	71,407 75	-----	512,959 58
Illinois.....	1,146,551 33	974,568 63	171,982 70	-----
Indiana.....	904,875 33	769,144 03	135,731 30	-----
Iowa.....	452,088 00	384,274 80	67,813 20	-----
Kansas.....	71,743 33	71,743 33	-----	-----
Kentucky.....	713,695 33	606,641 03	107,054 30	-----
Louisiana.....	385,886 67	268,515 12	-----	117,371 55
Maine.....	420,826 00	357,702 10	63,123 90	-----
Maryland.....	436,823 33	371,299 83	65,523 50	-----
Massachusetts.....	824,581 33	700,894 14	123,687 19	-----
Michigan.....	501,763 33	426,498 83	75,264 50	-----
Minnesota.....	108,524 00	92,245 40	16,278 60	-----
Mississippi.....	413,084 67	74,742 57	-----	338,342 10
Missouri.....	761,127 33	646,958 23	111,869 10	-----
Nebraska.....	19,312 00	† 19,312 00	(See note.)	-----
Nevada.....	4,592 67	4,592 67	-----	-----
New Hampshire.....	218,406 67	185,645 67	32,761 00	-----
New Jersey.....	450,134 00	382,614 83	67,519 17	-----
New Mexico.....	62,648 00	† 62,648 00	(See note.)	-----
New York.....	2,608,918 67	2,213,330 86	390,587 81	-----
North Carolina.....	576,194 67	386,194 45	-----	190,000 22
Ohio.....	1,567,089 33	1,332,025 93	235,063 40	-----
Oregon.....	35,140 67	35,140 67	-----	-----
Pennsylvania.....	1,946,719 33	1,654,711 43	292,007 90	-----
Rhode Island.....	116,963 67	99,419 11	17,544 56	-----
Tennessee.....	669,498 00	287,722 06	-----	281,775 94
Texas.....	355,106 67	130,008 06	-----	225,098 61
Utah.....	26,982 00	-----	-----	26,982 00
Vermont.....	211,068 00	179,407 80	31,660 20	-----
Virginia.....	† 729,071 02	515,569 72	-----	213,501 30
West Virginia.....	† 208,479 65	181,306 93	27,172 72	-----
Washington.....	7,755 33	4,268 16	-----	3,487 17
Wisconsin.....	519,688 67	429,196 68	39,346 43	51,145 56
South Carolina.....	363,570 67	377,961 30	† 14,390 63	-----

\* Included on compromise.

† Joint resolution, February 25, authorized the Secretary of the Treasury to transfer \$208,479 65 of the amount originally appropriated to Virginia to the State of West Virginia.

‡ Overpaid.

## NOTE.

Nebraska:		
Amount collected.....	\$4,281 60	
Amount allowed by Act of August 7, 1882 (22 Stat., p. 314) .....	15,030 40	
		\$19,312 '00
New Mexico:		
Amount allowed by Act of July 1, 1862 (12 Stat., p. 489).....		62,648 00

Nearly \$17,500,000 of the original \$20,000,000 levied is shown to have been paid, and something more than \$2,500,000 now stands charged against fourteen States, more than \$2,000,000 of it being against the States of Alabama, Georgia, Mississippi, North Carolina, Tennessee, Texas, and Virginia.

It is more than probable that no part of this sum of \$2,500,000 will ever be realized by the Government, except as it may be used as a set-off against claims like that of Georgia, first above referred to, and the effect of this bill (H. R. No. 3) will, in behalf of all the delinquent States, be as effective as payment, or a release.

The question is a pertinent one: Why should the delinquent States be released? The majority of the committee answer that the claim against Georgia and the other delinquent States is not a *debt* due from the *State*, making a distinction between Georgia as a political corporation, and the whole of the people of Georgia. Indeed, it is claimed that a tax cannot be levied upon a State. We do not see why. There might be difficulty in many instances to make collections if the State refused to perform its duty by prompt payment. There are but few of the States that are the owners of real estate beyond that that is used in the performance of the functions of government. The United States is greatly interested in the full performance by each of the States of all the duties imposed upon them, and could not consent to throw any impediment in the way of such performance, as would be the case if the Government should seize the Capitol, the prisons, the hospitals, and the colleges belonging to a non-paying State and sell them in order to realize the tax. Hence, in the case of one of the reluctant and non-performing States, the Government crosses the State line and lays hold upon the citizen, levies upon his land, and forces him to make the payment that is due from his State and that is owed by him, and payment of which is forced from him, only because his State is not in such condition as to be forced to pay, except at the expense of its usefulness as a governing factor.

The Federal Government is always forced to deal with the individual when the State refuses the performance of duty. When States were in rebellion they were forced to the resumption of duties through and by the exertions of the Government upon the individual members of the society composing and constituting the State. There is no other medium through which the Government can act. It coerces the State through the individual. Hence the machinery of the law of August 5, 1861, providing for the levy on and sale of the property of individuals and collections from them. If each of the States had been in sympathy and accord with the purposes of the Government, it is more than probable that the sections following the eighth of the Act of 1861 would never have been enacted. The Congress would have contented itself with the imposition of the tax upon the United States and "apportionment among the several States." But it was known that several of the States were hostile to the Government; that they would not pay the sum apportioned to them, and for this reason, and in our judgment only for this reason, do we find these provisions in the law that look to the collection of the sums not paid by States from the citizens of the delinquent States. We do not regard these provisions of the Act as do the majority, as evidencing a purpose on the part of the law makers

to exempt the State from indebtedness and impose indebtedness primarily upon the individual citizens composing the State. The practice of our Courts illustrates this principle. A debt is due from a county as a political corporation. Its officers refuse payment and refuse to levy a tax to meet a judgment rendered. The Court will send the Marshal and his deputies to make levies and collections, to lay hold of the individuals composing the political corporation that is derelict in its duty.

But it is said by the report of the majority that the tax cannot be a debt due from the States to be relieved, because those States had not assumed the debt. We submit that if the power to tax exists, it exists independently of consent. In the obligation to pay taxes there are none of the elements of a contract. The power to levy these taxes came from the Constitution. The language is, "The Congress shall have power to lay and collect taxes." "Direct taxes shall be apportioned among the several States." Not among the people of the several States, but among the States.

If the United States by a levy and apportionment of a direct tax among the States does not impose an obligation, a debt, upon the States, by what right do the States assume such tax and thus impose a burden on the people? The power of a State to levy taxes upon the people is limited to the necessities of its present or prospective indebtedness. These needs alone bound the power of taxation. If the State did not owe, or if it was not certain that at a future day the State would owe, various debts, then we submit the act of taking the people's money through the exercise of the taxing power would be the veriest robbery. What right has a State to assume the individual debt of A, B, or C, its citizens? If this tax was a debt from individuals, where did the several States get the power to assume it? Is the payment of the debts of citizens one of the functions of State government? The property of individuals can only be taken for public uses, but here we find a State seizing the property of one citizen to pay what the majority say is the private debt of an individual to the Government of the United States. It cannot be said that the prospect of a fifteen per cent fee can invest the State with the right to become a collecting agent and force its citizens to a payment of their debts, not by the use of the State Courts, but by the use of the taxing power of the State.

In our belief the State had no power to assume the debt of another, but being indebted to the United States, it had the power to assume the duty of the levy and collection of such sums of money as would pay the debt, and by so doing relieve the United States from the expense and responsibility of making the collections from many individuals, and by this assumption earn the fifteen or ten per cent promised in the law.

We are of the opinion that there are many reasons indicating the impolicy of attempts on the part of the United States to collect the sums due from the delinquent States. Yet a large majority of the States have paid their full apportionment. Why should those States which have refused to perform their duty receive rewards that are not bestowed upon those that were faithful to duty?

We are willing that the provisions of House Bill No. 3 should be enacted into law, but only on the condition that the States are all placed in an equally just position. If Georgia, that has not paid, is to be released, then Illinois, that has paid in full, should be repaid all she has paid of this direct tax, as well as all of her expenses incurred. The duty of prompt payment of the sums apportioned to each of the States rested upon all alike. It was Georgia's duty to pay promptly, just as it was the duty of Illinois. The latter did pay and did discharge in full her indebtedness.

The other utterly refused to pay, and now demands, through House Bill No. 3, that the United States shall surrender the only means by which it is practicable to force partial and long deferred payment. We do not believe there is justice in this demand; certainly not without all of the States are restored to the position occupied before the levy was made and the debt imposed.

We favor the restoration of all of the States to the status occupied before the imposition of the tax by the remission of all that part of the \$20,000,000 not paid to the States delinquent, and the return of all sums of money paid to the States making the payments, together with the percentage of ten or fifteen per cent due to the States making collections.

And as a measure that would establish proper relations of equality between the States and Territories in regard to said direct taxes levied, we report the following substitute for House Bill No. 3, and recommend its passage.

W. P. HEPBURN.  
A. A. RANNEY.  
A. X. PARKER.  
L. B. CASWELL.

Strike out from House Bill No. 3 all after the enacting clause, and insert the following words:

"That the Secretary of the Treasury be and he is hereby directed to state an account with each of the States and Territories of the United States as they existed on the fifth day of August, 1861, and with the District of Columbia, and in said statement of account he shall place to the credit of each State, Territory, and District, all moneys paid by either of them into the Treasury of the United States, or all moneys that were collected by the agents of the United States, from either of them or from their citizens, as direct taxes levied upon the United States, and apportioned among the several States, under the provisions of the Act of Congress approved August 5, 1861, and the amendments thereto; and he shall also place to the credit of each State, Territory, and District, such sums of money as were earned by any such States, Territories, or District, by reason of collections of said direct taxes made by them and paid into the Treasury of the United States; and said Secretary is directed to pay to each of said States, Territories, or District, the sums under said accountings found to be due, and credited to them, respectively; and the said Secretary is further directed to write opposite to any charges of debit that now stands on the books of the Treasury of the United States against any State, Territory, or the District of Columbia, by reason of the direct tax above mentioned, the words 'remitted in full,' and the said unpaid portion of said direct tax is hereby remitted in full to the States, Territories, and District of Columbia, and they are each hereby released from all obligation to pay any of the unpaid portions of said tax."

### EXHIBIT No. 38.

#### STATEMENT.

The intention evidently was to substitute the House Bill as introduced in the Forty-ninth Congress by Hon. W. T. Price of Wisconsin, to wit, H. R. 2776, or that introduced by Hon. Barclay Henley of California, to wit, H. R. 164, the same being identical with the bill as favorably recommended

for passage, and as reported upon by the honorable House Committee on Claims in the Forty-eighth Congress, and which is as follows, to wit:

That it shall be the duty of the Secretary of the Treasury to credit to each State and Territory of the United States, and the District of Columbia, a sum equal to all collections made from said States and Territories and the District of Columbia under the Act of Congress approved August fifth, eighteen hundred and sixty-one, and the amendatory Acts thereto, with an additional sum of fifteen per centum upon all amounts so collected where such States or Territories or the District of Columbia have collected the same without cost to the United States.

SEC. 2. That all moneys still due to the United States on the quota of direct tax apportioned by section eight of the Act of Congress approved August fifth, eighteen hundred and sixty-one, are hereby remitted and relinquished.

SEC. 3. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to reimburse each State, Territory, and the District of Columbia for all money found due to them under the provisions of this Act; and the Treasurer of the United States is hereby directed to pay the same; provided, that where the sums, or any part thereof, credited to any State, Territory, or the District of Columbia, have been collected from the citizens thereof, either directly, or by sale of property, such sums shall be held in trust by such State, Territory, or the District of Columbia for the benefit of those of its citizens from whom they were collected, or their legal representatives.

The letter of the Secretary of the Treasury, to wit, Senate Ex. Doc. No. 142, Forty-eighth Congress, first session, shows that the—

STATE OF.	Has Paid.	And now Owes.
Georgia.....	\$71,407 75	\$512,959 58
Mississippi.....	74,742 57	338,342 10
Alabama.....	8,491 46	520,821 87

So that the proper substitute of the Minority Report of the Judiciary Committee, to wit, of H. R. 164, or of H. R. 2776, if adopted, would relieve these particular States absolutely. But in the States of Virginia, Tennessee, South Carolina, Arkansas, and Florida, lands in each thereof were sacrificed in order to pay these direct taxes, and the United States Supreme Court has heretofore held that the titles so acquired are valid. (98 U. S., page 517.)

The account between these last named States and the United States now is as follows, to wit:

THE STATE OF.	Has Paid.	And now Owes.
Virginia.....	\$515,569 72	\$213,501 30
Tennessee.....	387,722 06	281,775 94
South Carolina.....	377,061 30	* 14,390 63
Arkansas.....	184,082 18	77,803 82
Florida.....	43,529 81	33,992 86

\* Overpaid.

(See Senate Ex. Doc. No. 142, Forty-eighth Congress, first session.)

Respectfully,

WILLIAM E. EARLE,  
For South Carolina.  
JOHN MULLAN,  
For California.

**EXHIBIT No. 39.****ORDER OF BUSINESS.**

The Speaker. The call of the committees for reference of report having been gone through with, the Chair will now, under the rule, call committees for the consideration of bills for one hour. The hour begins at eighteen minutes before one o'clock. The call rests with the Committee on the Judiciary. The gentlemen from Wisconsin [Mr. Price] is entitled to the floor for twelve minutes on the bill (H. R. 3) to prevent the claim of the war taxes under the Act of August 5, 1861, and Acts amendatory thereof, by the United States, as set-off against States having claims against the General Government.

Mr. Price. Mr. Speaker, by an Act of Congress approved August 5, 1861, a tax was levied on "the United States," which was apportioned among the several States and Territories and the District of Columbia as follows:

Alabama .....	\$529,313 33	Missouri .....	\$761,127 33
Arkansas .....	261,886 00	Nebraska .....	19,312 00
California .....	254,538 67	Nevada .....	4,592 67
Colorado .....	22,905 33	New Hampshire .....	218,406 67
Connecticut .....	308,214 00	New Jersey .....	450,134 00
Dakota .....	3,241 33	New Mexico .....	62,648 00
Delaware .....	74,683 33	New York .....	2,603,918 67
District of Columbia .....	49,437 33	North Carolina .....	576,194 67
Florida .....	77,522 67	Ohio .....	1,567,089 33
Georgia .....	584,367 33	Oregon .....	35,140 67
Illinois .....	1,146,551 33	Pennsylvania .....	1,946,719 33
Indiana .....	904,875 33	Rhode Island .....	116,963 67
Iowa .....	452,088 00	Tennessee .....	669,498 67
Kansas .....	71,743 33	Texas .....	355,106 00
Kentucky .....	713,695 33	Utah .....	26,982 00
Louisiana .....	385,886 97	Vermont .....	211,068 00
Maine .....	420,826 00	Virginia .....	729,071 02
Maryland .....	436,823 33	West Virginia .....	208,479 65
Massachusetts .....	824,581 33	Washington .....	7,755 33
Michigan .....	501,763 33	Wisconsin .....	599,688 67
Minnesota .....	108,424 00	South Carolina .....	363,570 67
Mississippi .....	413,084 67		

And that Act further provided that the President should divide the States and Territories into convenient collection districts and appoint assessors and collectors in each district so formed. Oaths were to be taken and bonds filed by such officers, and they were empowered and required to collect the same, and, when necessary, to seize and sell property of individuals in either of said districts to an amount equal to the whole tax so levied, and all the necessary machinery created for getting the tax or property to an amount equal thereto.

Section 53 of said Act provided that any State or Territory might assume, collect, and pay into the Treasury of the United States the tax thus imposed, and in all cases where the tax should be thus collected without cost to the General Government a credit or allowance of fifteen per cent should be allowed to apply as part of said sum up to a certain date and ten per cent up to a certain other time. That law stands to-day on the statute books of the nation unrepealed and only partially executed. Some of the States have paid the full amount of their quota, some only a part, and some none at all. There remains yet due and unpaid the sum of \$2,624,509 59.

No disposition is manifested by those in arrears to pay it, and no effort is being made to collect it, except by the process of offsetting any sum or

sums that from time to time may become due from the General Government to such delinquent States. We were officially informed in 1884, by the then Secretary of the United States Treasury, that the rule up to that time had been invariable, as applied to all the States in arrears, to apply all such sums as from time to time might become due to the States from the United States toward the liquidation of such balances, and we all know that such is still the rule.

The last official statement of the United States Treasurer shows that the State of Georgia owes the United States \$512,959 58.

In 1883, by an Act of Congress, the sum of \$35,555 42 was appropriated to that State in full of a claim which, while it may have been just, was very, very old. The accounting officer of the Treasury, acting in harmony with a rule which was not only just, but was the same that had been, was then, and still is applied to each and every other State, refused to pay over the money to the State of Georgia, but proposed to enter it as a credit in partial liquidation of her long-standing indebtedness to the General Government. This last financial transaction has probably led to the introduction of the bill under consideration—a bill to prevent the claim of the war taxes under the Act of August 5, 1861, and Acts amendatory thereof, by the United States, as set-off against States having claims against the General Government.

This is an impartial statement of the case presented to the House for our consideration and approval or disapproval.

If this bill should pass it takes from the Government its last and only practical or available means of ever collecting a dollar of the \$2,624,509 54 which is due to it.

That the assessment or apportionment of the said tax was fair and equitable is not doubted. That it was necessary no one will deny. That it created a debt against each of the States is not disputed. That it was cheerfully paid by some of the States, and forcibly collected from others, in part or in whole, is just as certain.

Then can we be asked with reason or propriety to say, by the passage of this bill, that the American Congress will punish the States or the people who responded to the call of the country in its hour of peril and dire necessity, by discriminating against them; that the American Congress is willing to change a rule, which has been inflexibly enforced against them, to favor a State or a people who were, at least, dilatory in meeting their just proportion of this measure for the common good?

Are we willing to say, by the passage of this bill, that Georgia, which has paid only \$71,407 75, and owes yet \$512,959 58; that Mississippi, that has paid only \$74,742 57, and owes \$338,342 10; that Alabama, which has paid only \$8,491 40, and owes \$520,821 87, shall be released from their liability, when Louisiana has paid in money \$268,515 12, when North Carolina has paid in money \$386,194 45, when by the sale of lands there has been forcibly collected from Arkansas \$184,082 18, from South Carolina \$377,961 30, from Virginia \$515,569 72, from Florida \$43,529 80?

By what process of reasoning can an honest man conclude that there is an element of justice in such a course? And yet a vote for this bill would be to indorse this glaring wrong.

I have thus far only adverted to the wrong which would be done to certain of the Southern States by passing this bill, but its injustice becomes still more apparent when it is considered that of this same tax, for the common good of all the States:



California has paid	\$247,941 13	Minnesota	\$108,424 00
Connecticut	308,214 00	Missouri	761,127 33
Delaware	74,683 33	New Hampshire	218,406 87
District of Columbia	49,437 33	New Jersey	450,134 00
Illinois	1,146,551 33	New York	2,603,918 67
Indiana	904,875 33	Ohio	1,567,089 33
Iowa	452,088 00	Oregon	35,140 87
Kansas	71,743 33	Pennsylvania	1,946,719 33
Kentucky	713,695 33	Rhode Island	116,963 87
Maine	420,826 00	Vermont	211,068 00
Maryland	436,823 33	West Virginia	208,479 65
Massachusetts	824,581 33	Wisconsin	468,543 11
Michigan	501,763 33		

In the Forty-eighth Congress I had the honor to introduce a bill which received a favorable recommendation from the Committee on Claims, to which it was referred, the purpose of which was to do just what is contemplated by the bill under consideration, to wit: relieve all of the States and Territories from all balances against them growing out of said tax of 1861 and Acts amendatory thereof; but another provision, coupled with the foregoing, was one that provided that all sums which had been paid by any of the States and Territories should be credited to them severally on the books of the United States Treasury, and any balance found due after such credit had been entered should be paid to them respectively.

This bill was never reached and considered by the House, but the Committee on Claims having the same in charge submitted a favorable report, a copy of which I herewith submit and make a part of my argument:

Mr. Price, from the Committee on Claims, submitted the following report to accompany bill H. R. 6047.

The Committee on Claims, to whom was referred the bill (H. R. 6047) to adjust certain accounts between the United States and the several States and Territories and the District of Columbia, has had the same under consideration, and reports:

Under the Act of August 5, 1861 (12 Stat. at L., 292), a direct tax of \$20,000,000 was laid upon the United States, and was apportioned among the different States and Territories and the District of Columbia, based on population.

By section fifty-three it was provided that each State might assume the payment of its quota thereof, and if it did so on or before the second Tuesday in February next, after the passage of the Act, it should have a deduction of fifteen per cent on so much of the quota of direct tax apportioned to such State in lieu of the compensation of officers for collecting the tax as was actually paid into the Treasury on or before the last day of June, and a deduction of ten per cent upon so much as should be paid into the Treasury thereafter and before the last day of September of that year.

Some of the loyal States assumed their quotas, while others did not do so. Of those which assumed the payment some paid prior to the last day of June, others prior to the last day of September, while some of them have only paid in part, and still owe balances.

Of the loyal States which did not assume their quotas, the amount thereof has been collected from some in full by the First Comptroller stopping in the Treasury sums going to them on account of five per cents from sales of public lands and other allowed claims in their favor against the United States.

An Act for the collection of direct taxes in insurrectionary districts within the United States was passed June 7, 1862 (12 Stat. at L., 422). This contained no provision for the assumption of its quota by the insurrectionary States. Under this Act a portion of the quota of some of the States was collected directly from the owners of real estate, and other portions were collected by sales of real estate, while from others nothing whatever was collected.

Since the war, as in the case of loyal States, the First Comptroller has withheld and applied to the quotas of these States such sums as they were entitled to receive on account of five per cents from the sales of public lands or upon other allowed claims in favor of these States respectively against the United States.

The quota of each State is not a liability upon the State as such, but upon the real estate of the people of the State, and was by the law made a lien upon each piece thereof in the proportion of its value to the aggregate value of the real estate in that State.

The quota of each State and Territory has been charged to it upon the books of the Treasury, and such sums as have been paid or collected, whether directly or by sale of property, has been credited against this quota, as has also all such sums as were going to said State on account of five per cents from sales of public lands and other allowed accounts. This system of withholding sums due to States and crediting them on account of this tax due by its citizens (or by only a portion of its citizens where some have paid) is a source of constant dissatisfaction and friction, and at the last session of Congress a

bill was passed providing that a claim should be paid directly to a State in money for the purpose of avoiding its being thus credited, and a bill is now pending in the House to pay in money to a State an amount which has been credited in the Treasury upon its quota of this direct tax. The extreme undesirability of these issues over accounts between the States and the General Government can not be overstated, and is so apparent as not to require to be more than mentioned. The injustice, too, of the utter inequality of the payments is so apparent as to require no argument as to the importance of adopting some mode of adjusting and equalizing them, and if this can not be done absolutely, then at least as far as is practicable and possible.

To do this is the purpose of the bill under consideration. It provides that the account of each State and Territory be credited with a sum equal to all collections made from each State and Territory, or any citizen thereof, under the Act of Congress approved August 5, 1861, and Acts amendatory thereto, with an additional sum of fifteen per cent on such payments made without cost to the United States, and also to relinquish all claim for all sums remaining unpaid on said direct tax. This will give to those States which assumed and paid their quotas the benefit of the deductions to which they thus entitled themselves. In those cases in which the tax has been collected from individuals, either in money directly or by sale of land, it provides, by an amendment herewith submitted, that the amount thus paid back shall be made to the State in trust for those of her citizens who have paid the same.

The bill was fully and carefully considered by the late Secretary of the Treasury, Hon. Charles J. Folger. On June fourteenth, ultimo, he wrote a letter, in which he uses the following language:

"The purpose of the bill is to relieve and discharge from further liability for that tax those States and Territories which have not paid the portion thereof apportioned to them respectively; and to repay, out of any money in the Treasury not otherwise appropriated, to those States and Territories which have paid any portion, the sums by them respectively paid. Though by the Act above cited this tax was made an annual one, an attempt to collect it for more than one year has never been made. By that attempt there were collected about \$15,000,000, principally from the States which did not seek to go out of the Union; and there were left uncollected about \$5,000,000, principally in the States which did seek to go out of the Union. The sum uncollected remains a charge against these States, and, for the purposes of this letter, it may be assumed that it is a valid and enforceable charge. It is plain, however, that no legislator at this day would propose to raise revenue by a tax of that kind. There is no need of resorting to such methods. The revenue of the Government from sources not so extraordinary, and collectible by means and appliances not so objectionable as those involved therein, are ample for its purposes. They are, indeed, superabundant, and the concern of statesmen is rather how they may be reduced than how they may be increased. The Government then needs not the money to be got by enforcing this tax.

"At the same time, it is plain that to enforce it would put a grievous burden upon the people of the States which are in default in payment. It needs no array of facts to show this. Congress in one, if not in both branches, has this session considered the proposition of large pecuniary aid to these people to help them place and keep up common schools, and the Senate has passed a bill therefor.

"If there be need for that succor, there would be harm in enforcing this charge. It is to be considered, too, that while taxes are seldom looked upon with favor, this would be specially objectionable. The purpose for which it was laid can but be remembered with distaste. It can scarcely be expected that there would be cheerful aid from the State authorities in the enforcement of it. It may be doubted whether there would be any. Indeed it would, without further legislation, have to be enforced by the machinery provided by the Act under which it was laid. This would call for the appointment of numerous Federal officials, who would go among the people as obnoxious exactors. I think it must be conceded that there is, and ever will be, great reluctance to ever setting about the collection of this tax. That it never had great favor, is shown by that it was never put in force but one year. In practical effect, then, the law for it is obsolete. Why, then, should there remain this unenforced liability, a menace to the people, the enforcement of which is called for by no public need, nor by any public opinion?

"In my judgment, the people and the property of the States in default should be relieved and discharged from it.

"But to give such relief and discharge would be to put an equality of burden upon the States which paid, unless they in turn were in some way relieved. This the bill proposes to do by repaying to them the sums received from them. Assuming that the tax was lawful, and the collection, as far as made, was warranted, this, apart from the circumstances, would be a proposition to donate to the States surplus moneys of the United States—a proposition which I should not favor. But, as connected with the proposition to discharge from onerous and needless liability one portion of the people, it takes on a different character; it is presented as an adjustment between different bodies of the people, and is worthy of acceptance. Indeed, it would be unjust to the people of the loyal States to release the people of the once insurrectionary States from their liability without refunding to the former the sums paid by them, and there are analogies in the legislation of Congress. Acts have been passed refunding to States moneys raised by them for the raising, arming, and equipping of troops for the Army of the United States in the civil war, and for making other refunds of like character. The purpose of laying this direct tax was to aid in the ultimate payment of the extraordinary expenses of the Government

caused by the civil war. The raising, arming, and equipping of troops by the States served to keep down those expenses for the time. It was a voluntary act upon the part of the States. There is no violation of principle or fundamental law in repaying to the States from the funds of the United States the cost thereof. The purpose and effect of this bill is not so unlike in nature to that as not also to be freed from the objections to a bald distribution among the States of what are called the surplus revenues of the United States.

"Under the peculiar facts of the case, and as it is not likely to become a precedent for other disposals of Federal moneys, my judgment is, that the proposed measure is a good one. It is true that exactly equal justice can not be done in carrying out the proposition of the bill. Thus, in some of the Southern States the tax was to some extent enforced. Tax sales were made of pieces of real estate in instances for less than the value of them. Only the surplus of purchase money over the tax and charges has been available to the owners, and they have lost the difference between that and the total of the purchase money, and between the purchase money and the real value.

"On the other hand, in most, if not all, of the Northern States, the payment to the United States of the tax was assumed by the State government, which collected the amount of its own people in its own tax levy. Of course, in the changes of citizenship and ownership of taxable property, while a repayment into the State Treasury will tend to reduce the amount of State tax, it will not inure to the benefit of some of those who in 1861 were taxpayers. But these failures of full and general compensation in dealing with transactions so long past must ensue, and are not to be potentially urged against proposed measures, which in the main do work equal benefit."

The Comptroller of the Treasury, Hon. William Lawrence, also recommends the passage of this bill in the following terms:

"The object of these bills is to remit, so far as not collected or paid, the direct taxes laid upon and apportioned to the States, Territories, and District of Columbia under the direct tax Act of August 5, 1861, and to refund to such States, Territories, and District respectively the amount of such taxes so far as paid in any mode whatever.

"I have considered the subject with care, and now have the honor to state that, in my judgment, it is alike just, judicious, and practicable to remit all such taxes not yet collected, to refund the amounts paid in any form by any State or Territory, and to refund to private persons or their legal representatives all amounts of such tax by them paid or collected by sale of real estate or otherwise."

In view of the status of this tax as exhibited by these facts, your committee fully concur in the recommendations herein set out. In those cases in which the money, where-with any State stands credited, was collected from its citizens, the amount to be returned to said State under this bill should be for the use and benefit of those citizens from whom it was collected, or their legal representatives, and your committee recommends that the bill be amended by adding the following at the end thereof: "Provided, that where the sums, or any part thereof, credited to any State or Territory, has been collected from the citizens thereof, either directly or by sale of property, such amount shall be regarded as received by said States in trust for the benefit of those of its citizens from whom it was collected, or their legal representatives."

Your committee recommends that the bill thus amended do pass.

At the commencement of the present session I again introduced the same bill as amended by the Committee on Claims, which is now pending and before the Committee on the Judiciary, and I submit that this bill ought not to pass, but that the one referred to, under the provisions of which the States in default should be released and the States which have paid should be reimbursed, should pass.

But it is argued that this bill, H. R. No. 3, should pass because the law under which the tax was levied was unconstitutional. For the purpose of the argument let us admit that it was unconstitutional, and it would follow that no further collections should be made under or by virtue of it, and bill No. 3, H. R., should become a law, but only side by side with another provision of law under which all sums heretofore collected under that unconstitutional law should be refunded to those from whom it was collected.

Pass this bill to relieve the defaulting States on the ground of an unconstitutional levy, and then we would be told just as gravely that it would be unconstitutional to refund the amounts paid.

I wish the time might come in my day when the Constitution would not be invoked to justify a wrong, or whenever men desired to avoid doing right. It has been warped and twisted and misconstrued and misinterpreted in support of every job and scheme and unworthy purpose, when the purpose of its framers was to secure equal and exact justice to every citizen and every section of the Republic.

But, unfortunately for those who invoke its aid in this case to avoid the payment of a just obligation, the Supreme Court of the United States (volume 98, pages 527 and 528) have declared that the laws under which the levy was made was constitutional, in the following language:

One other assignment only remains: It is that the Acts of Congress were unconstitutional, because the amount of the direct taxes apportioned to the State of South Carolina was increased by the addition thereto of a penalty of fifty per cent, and, therefore, was not in proportion to the census or enumeration directed to be taken by the second section of the first article of the Constitution.

The assignment rests upon a mistaken construction of the Acts of Congress.

It is true that direct taxes must be apportioned among the several States according to the population.

The Acts of August 5, 1861, June 7, 1862, and February 6, 1863, did so apportion the tax.

The fifty per cent penalty was no part of it.

The Act of Congress of 1861, which levied the tax, provided for no penalty, except for failure to pay it when it was due; and the penalty charged by the Act of 1862 and 1863 was also for default of voluntary payment in due time.

A careful reading of the Acts makes this very plain.

Throughout a distinction is made between the tax and the added penalty.

It is recognized in the first section of the Act of 1862; in the second, and in the third, as well as elsewhere.

By the third section the owner of lots or parcels of land was allowed to pay the tax charged thereon (not the tax and penalty) and take a certificate of payment, by virtue whereof the lands would be discharged. It can not, therefore, be maintained that the tax was in conflict with the Constitution.

So far as this bill is concerned it should be defeated by a vote so clear and emphatic as to discourage future attempts to secure legislation so repugnant to justice and fair dealing.

If the Supreme Court are correct in their interpretation, then the tax was legal and therefore the States in default are legally indebted, and this bill releases them, practically, from that indebtedness.

If the assessment was illegal, it was at least necessary for the good of all the States, and was cheerfully paid by some of the parties in interest; from others collections were enforced, and all had the benefits, and no part of the Union was more directly or materially benefited than these States now in arrears.

The whole tax should be treated as a loan, and as it was paid, so far as paid at all, by the people, and added that amount to their taxes, it should, now that the conflict is past and the white dove of peace is hovering over a reunited, happy, and prosperous country, be restored to the Treasuries of the several States that contributed it, to lessen the amount of taxes in the future.

The State of Ohio on January 14, 1885, memorialized this Congress to pass a bill to remit the balance due from States in arrears, and to reimburse the States for amounts paid by them.

Mr. Culberson. I will yield to the gentleman from Ohio [Mr. Taylor] as much of my time as he wishes to occupy.

Mr. Ezra B. Taylor. Mr. Speaker, in the time allotted to me in this discussion I can do no more than state the position I occupy upon the bill before the House.

By enactment of Congress, approved in March, I believe, 1883, the Secretary of the Treasury of the United States was authorized to pay to the State of Georgia \$35,500. When the State of Georgia applied for that money the United States Treasury officials refused to pay it, but proposed to apply it to a claim said to be due from the State of Georgia to the Government of the United States. This bill is one intended to prevent that adjustment, and any other like it, if any other exists.

There may be two questions in this case, one of law and the other of policy. I desire first to state the question of law involved. It is a cold,

clear question of law. There is no place for any political or other antagonism or sympathy.

The Government of the United States owes Georgia \$35,500. It is claimed that Georgia owes the Government of the United States a greater sum. Is this a fact? If it is not a fact, then no one can deny this measure ought to pass, so far as Georgia is concerned. I say unhesitatingly—I say from examination—I say from what I believe to be my knowledge of the law as connected with this case, that Georgia owes the Government of the United States nothing by virtue of the legislation referred to as the legislation of 1861. Nor do other States, as States, that come within the category of this bill. If there is no debt then from Georgia due by it to the United States, there should be no set-off. I propose only to state that proposition.

Now, there is nothing claimed of such State but that which arises under the law of 1861, by which it was attempted to raise an annual direct tax of \$20,000,000 per year. That law provided not for assessments for one year, but it was a continuous law providing a direct tax of \$20,000,000, apportioned among the States in proportion to population, without limit as to time. But this part of the law was repealed at a subsequent session of Congress. I will not inquire whether Congress, under the Constitution, had power to make a State its debtor; I will only answer Congress did not attempt to make a State its debtor in this Act of 1861. It was a law providing for a direct tax among the States. It is a very long law, comprising more than sixty sections. As was said by the gentleman from Iowa [Mr. Hepburn] the other day, the law provided the whole machinery for the collection of that money, and did not provide State machinery. It provided United States machinery. It was solely a law to be operated by agents of the United States. It was a direct tax upon the people of the United States apportioned among the States according to the ratio of population. The assessor, the collector, the provision of liens, the sale of real estate and personal property, all were to be done through the agency of the United States, and not through the agency of any State.

It was not called a debt of the State; it did not progress as though it was a debt of the State, but simply this power of direct taxation was applied in this way, or sought to be applied.

Now, it may be—I have heard it argued here—that the course which Congress took was outside of its power under the Constitution. Admitting that, if you please, the admission amounts to this only, that then there is no indebtedness of any kind even from the people of Georgia. One other fact, Mr. Speaker. A provision was included in this law by which an inducement was held out to the different States to make it a State debt or State obligation, and not an individual burden. It was provided in this law itself that such States as would assume the amount of the indebtedness and make it a State obligation within a limited time should have a credit of fifteen per cent upon the whole amount of the tax assessed against the State. It was also provided that those States who would assume it as the debt of the State within a certain other limited time should receive a credit of ten per cent on the total amount. Neither the States nor the Congress understood it then to be a State indebtedness. But, says the gentleman from Iowa, tell me under what authority of the Constitution could this be assumed if it was not a debt? Perhaps none. But it still goes to this point, that the Congress did not understand it to be a State debt, did not regard it as an obligation of the State, nor was it so understood by the States themselves.

Now, Mr. Speaker, I have stated simply this plain legal proposition, and have stated the facts in regard to that enactment. It did not seek, it did

not intend, nor did it impose a State obligation; and while it has been suggested that it is difficult to see the difference between the obligation of the people of the State and the obligation of the State itself, there is no such difficulty, in my mind, any more than there is a difference between a corporation and the stockholders of that corporation. The interest of these parties are not identical—the interests of the individual and of the State—unless it should be that the precise manner of taxation, the precise thing taxed, should be in the same ratio, on the same basis, under the law of 1861 and under the State law, which was not true. So I say that, as a matter of law, there cannot be, and never ought to have been, in any case, any legal offset; and I say that believing I speak the exact truth in regard to what the law is.

I do not deny that the imposition of the tax was legal under the decision of the Supreme Court, or without it under the authority of the Constitution.

Now a second proposition, and that is, that this tax ought not, in my judgment, to be collected in this way anyhow. It can not be collected in this way if this legal proposition be correct. An attempt to collect it might succeed in confiscating the debt we owe to the State of Georgia; but it never would be in the mind of a lawyer a collection of a debt, but the confiscation of credits, and that is all there is of it. There has never been anything else in it so far as it has been enforced heretofore; and it makes no difference what political feeling might induce me to do. I am not so made that, standing here as a legislator, I can trample by my vote under foot the law and the Constitution of my country.

But this law was found in less than a year to have been a mistake. Many of the States, for the purpose of getting the advantage of the inducement held out to them of a deduction as provided in the law, assumed the indebtedness as a State obligation, and paid the tax with those deductions. The law was repealed so far as subsequent action was concerned; and no administration up to this day has attempted to collect any of these debts since. Nay, more, sir; the machinery provided by that law for its enforcement was never appointed. No one existing in this House or in this country expects to collect the balance of the millions that are now due under that enactment. There should be no trap set by which, when States become creditors of the General Government, that credit may be wiped out by springing the trap set by it, while at the same time there is no intention to enforce the law honestly and squarely by the collection of this debt. It may, sir, be collected to-day. Every dollar the State of Georgia owes may be collected. Our President may appoint his assessors and collectors, and he may force by distress and by sale of real estate in Georgia, the collection of the amount of this tax. Does anybody ask it? Have the Republican administration gone forward in that direction? I say no. The fact is, that as we do not intend to collect it, nobody desires the collection. What then? There is but one way in justice out of this matter. Not one dollar of it should be collected forcibly from the State of Georgia, from Ohio, or Colorado, or any other State. But I do claim, sir, that this tax should be wholly repaid or wholly collected; and, as it cannot and will not be collected, I am intending, if possible, to say to-day that the tax already paid by the States shall be repaid to them, as it honestly should be.

Mr. Cannon. Will the gentleman allow me to interrupt him right there?

Mr. Ezra B. Taylor. Yes, sir.

Mr. Cannon. If that be the gentleman's position, why not vote for the amendment of the gentleman from Iowa [Mr. Hepburn], which does exactly that thing?

Mr. Ezra B. Taylor. I have not said whether I will vote for that amend-

ment. I do not know what it is. But I say, behind that, what is sufficient for me to control my vote in this case, there is no place for offset; there is no offset to have this applied to. There is no legal obligation on the part of Georgia to pay the Government of the United States one single dollar growing out of the legislation of 1861. Any man that will go into that library and take up the Statutes at Large of 1861, I do not care whether he is a lawyer or not, I will venture my reputation as a man on the assertion that he will say when he is through that there never was an intention of making that a debt against the State of Georgia, nor was there ever such an effect marked out by that statute. And so, standing right there, I am fully able to say I will support this bill; and when another comes for that other purpose, just and fair and honest as it is, then I will give it my most enthusiastic support.

Mr. Cutcheon. Will the gentleman permit me to ask him a question?

Mr. Ezra B. Taylor. Yes, sir.

Mr. Cutcheon. When that direct tax of 1861 was laid upon the States—

Mr. Ezra B. Taylor. It never was.

Mr. Cutcheon. Well, it was apportioned to the States, was it not?

Mr. Ezra B. Taylor. It was apportioned among the people of the States.

Mr. Cutcheon. Was the entire tax apportioned against the States which were then in their normal relations to the Federal Government?

Mr. Ezra B. Taylor. It was apportioned among the people of the States and Territories regardless of any internal commotion.

Mr. Cutcheon. And then the proper proportion of it was made an obligation against the State or people of Georgia?

Mr. Ezra B. Taylor. Against the people of Georgia in their individual capacity; a provision was made for liens on their lands, not liens on the property of Georgia.

Mr. Cutcheon. In other words, was it not a tax on the people of Georgia as much as on the people of Ohio?

Mr. Ezra B. Taylor. Yes. But what does all this mean? What is behind it?

Mr. Cutcheon. Have not those States, which were in normal relations to the Federal Government, paid their proportions?

Mr. Ezra B. Taylor. That is not true as to all of them. Colorado has not paid. But, if so, it simply comes to the other point that you ought to pay it back as you do not collect the balance. But it does not go to this point that you shall make a legal obligation where you know one never existed, because it may be your people at home are making a clamor about it.

Mr. Price. Will the gentleman permit me to make an inquiry?

Mr. Ezra B. Taylor. I am occupying another gentleman's time.

Mr. Price. I desire to say—

Mr. Ezra B. Taylor. I decline to yield. A "desire to say" is different from a "desire to ask."

Mr. Culberson. How much time have I remaining?

The Speaker *pro tempore* [Mr. Mills.] The gentleman from Texas has forty minutes of his time remaining.

[Mr. Culberson addressed the House. His remarks will appear hereafter.]

Mr. Warner of Ohio. Mr. Speaker, this issue hinges upon one single question, and that is, whether the tax levied under the Act of 1861, was chargeable to the State or not. If that tax, as levied under the Act of 1861, was chargeable to a State, then, of course, any debt owed by the United States to a State might be set off against the charge, under that law, against

a State. But if it were not chargeable against a State, then, of course, it can not be set off.

Was it chargeable against a State? That question has been so well stated and argued by my colleague [Mr. Taylor] this morning that it is not necessary for me to go over the ground again.

That the direct tax of 1861, levied under the apportionment clause of the Constitution, was a tax levied upon real estate, upon lands and buildings, is perfectly clear from the Act itself, and from the discussions which took place in reference to it in both Houses on the passage of the Act. It was said at the time, by Mr. Stevens and by Mr. Bingham and others, that it was a tax on land, and that a direct tax could only be levied upon land.

In the very nature of things it could not be levied upon the State itself, for the State has little or no property upon which to levy a tax. It is true you may levy it upon the Statehouse and other State property, but what would it amount to? In fact, the law of 1861, as did all other laws imposing direct taxes, provided that all State property should be exempt from taxation.

The Government provided the machinery to collect the tax directly from the individual, and I maintain if the United States Government were now to proceed to collect that tax it would proceed to collect it from the owners of the land, those who now hold the land, which was a subject of taxation when the tax was levied. The whole question, I say again, hinges on that one fact, whether it was a charge or could be a charge against the State, under the Constitution, or against the individual.

I do not care, Mr. Speaker, to argue the question further, as it would be only traveling over the same ground which has been so thoroughly gone over by other gentlemen who have preceded me in this discussion.

[Mr. Ranney addressed the House. His remarks will appear hereafter.]

Mr. Hammond. Mr. Speaker, the time when, according to an understanding with the gentlemen from Illinois [Mr. Morrison], the consideration of this subject was to be suspended for to-day, has now arrived. But if the gentleman from Massachusetts [Mr. Ranney] wants only a few minutes to conclude, perhaps an agreement may be made with the gentleman from Illinois to that effect.

The Speaker. The time assigned for the consideration of this subject to-day by order of the House has now expired.

Mr. Ranney. How much of my time remains?

The Speaker. One half hour. The gentlemen will be entitled to occupy the floor for that time when the subject is resumed.

Mr. Ranney. It is not very material to me whether I go on now or at another time, although I would prefer to finish to-day.

Mr. Hammond. The gentleman from Illinois consents that if the gentleman from Massachusetts wants only a few minutes more, he may go on and finish now.

Mr. Ranney. I do not wish to give up any part of my time; but I may finish in half the time I am entitled to.

The Speaker. The gentlemen will be entitled to the floor when the subject is resumed.

**EXHIBIT No. 39½.**

Forty-ninth Congress, first session. H. R. 3.

In the House of Representatives. February 8, 1886.  
Mr. Little proposed an amendment to bill

**TO PREVENT THE CLAIM OF THE WAR TAXES**

Under the Act of August 5, 1861, and Acts amendatory thereof, by the United States, as set-off against States having claims against the General Government, as follows, to wit:

Proposed amendment to H. R. 3. Add to section one the following:

"*Provided*, that the Secretary of the Treasury is hereby authorized and directed to enter a credit, as of money advanced to the United States for account, to any State or Territory or the District of Columbia for any sum or sums received therefrom, or from lands or land owners thereof on any account whatsoever, under said Act of August 5, 1861, or any Act amendatory thereof, and to pay to the same any balance found due on account, after entering such credit, out of the money in the Treasury not otherwise appropriated; one half of such balance to be paid within one year, and the other half within two years after the passage of this Act; *provided*, the President may defer either or both such payments for a definite period, and continue so to do if, and as long as, in his own judgment the public interests so require, not, however, beyond five years; and the payment first referred to in this section shall be made at the time of paying the first installment of said balance as aforesaid. The provisions of said Act of August fifth, and any Act amendatory thereof, in so far as they relate to the levy, apportionment, and collection of said war tax, are hereby repealed, and all liabilities and obligations to the United States created thereby or assumed on account thereof are hereby remitted and canceled."

**EXHIBIT No. 40.**

21 April, 1886.

Hon. J. R. EDEN, *House of Representatives*:

DEAR SIR: Referring to the interview last night by Mr. Earle and myself, we forgot to call your attention to the fact that on Wednesday, March 17, 1886; the House had under consideration the *claim* of the *State of Florida* as reported from the committee by Mr. Dougherty, to wit: House Report No. 303, to accompany House Bill 3877. The inquiry was made by Mr. Burrows of Michigan, whether in the calculations allowing said claim any *deduction* was made on account of Florida's *direct tax*; whereupon Mr. Davidson replied "that an amendment would be offered to meet that," and thereupon followed various suggestions by Mr. Long, Mr. Buchanan, Mr. Price, Mr. Warner, and others, and all of which finally resulted in an amendment by Mr. Buchanan, from the Committee on Claims, as follows, to wit:

"*Provided*, that the balance remaining due of the direct tax apportioned to the State of Florida by the direct tax Act of August 5, 1861, be held and treated as a proper set-off against the claims of the State of Florida in the adjustment herein required, *unless Congress shall otherwise provide*

*by general law, releasing all claims for said direct tax, or refunding all payments of such tax heretofore made."*

This amendment was agreed to, and as the same appears of record on page 2455 of the Congressional Record of March 18, 1886, which I inclose you herewith. From this affirmative action by Congress you will readily see that the House has had before it the subject-matter of the direct tax and making off-sets, etc., and by its action it has practically *voted down* the provisions contained in Mr. Hammond's bill, and acted in anticipation of some remedial measure touching the subject of direct tax; and all of which I recommend to your careful consideration.

Yours, truly,

JOHN MULLAN.

N. B.—You will perceive that the *action* of the House on the Florida case was in harmony with the *recommendation* of the Committee on Claims when reporting (through Mr. Trigg) upon H. R. 2498. February 28, 1886, in House Report No. 519, page 4; copy herewith.

Respectfully,

JOHN MULLAN.

**EXHIBIT No. 41.**

Forty-ninth Congress, first session. S. 2457.

In the Senate of the United States. May 24, 1886—Ordered to be printed.

**AMENDMENT**

*Intended to be proposed by Mr. Hampton to the bill (S. 2457) for the relief of the State of Georgia, viz.: Strike out all after the enacting clause and insert the following:*

That it shall be the duty of the Secretary of the Treasury to credit to each State and Territory of the United States and the District of Columbia a sum equal to all collections made from said States and Territories and the District of Columbia, under the Act of Congress approved August fifth, eighteen hundred and sixty-one, and the amendatory Acts thereto, with such additional credits as under said Act they are entitled to have in consequence of having paid any portion thereof without expense of collection to the United States; and such sums also as have been collected from lands or owners thereof under supplemental Acts on any account whatever.

SEC. 2. That all moneys still due to the United States on the quota of direct tax apportioned by section eight of the Act of Congress approved August fifth, eighteen hundred and sixty-one, are hereby repealed and annulled.

SEC. 3. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to reimburse each State, Territory, and the District of Columbia for all money found due to them under the provisions of this Act, and the Treasurer of the United States is hereby directed to pay the same; *provided*, that when the sums, or any part thereof, credited to any State, Territory, or the District of Columbia, have been collected from any citizen thereof, either directly or by sale, resale, or lease of property, such sums shall be held in trust by such State, Territory, or the District of Columbia, for the benefit of



those of its citizens from whom it was collected, or their legal representatives.

Amend the title so as to read: "A bill to credit and pay the several States and Territories and the District of Columbia all moneys collected under the direct tax levied by the Act of Congress approved August fifth, eighteen hundred and sixty-one."

#### EXHIBIT No. 42.

#### EXTRACTS FROM THE PUBLIC LAWS OF THE STATE OF GEORGIA.

An Act to authorize his Excellency the Governor of this State [Georgia] to issue and negotiate the bonds of this State [Georgia] whereby to raise money to meet appropriations made and to be made by the General Assembly \* \* \* and to relieve the people of this State [Georgia] from the U. S. Land [or Direct] Tax, etc. (Public laws of Georgia, 1865-6, page 19 \* \* \*).

SECTION 7. That his Excellency the Governor is hereby authorized to issue and negotiate bonds, to the amount of six hundred thousand dollars, at such time and rate of interest, not exceeding seven per cent, as he may find necessary and proper, for the purpose of paying to the Government of the United States the Land [or Direct] Tax about to be levied on the people of the State [Georgia,] in behalf of the Government of the United States, said tax amounting to five hundred and eighty-four thousand three hundred and sixty-seven dollars and thirty-three cents, and interest which may be due thereon.

#### EXHIBIT No. 43.

#### EXTRACTS FROM THE PUBLIC LAWS OF THE STATE OF TEXAS.

Approved November 13, 1866 (chapter 23, page 257).

An Act to assess and collect the *Direct Tax due United States Government for the year 1861*, under the provisions of "An Act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes," approved June 7, 1862, and to make provisions for the payment thereof to the United States Government.

SECTION 1. Be it enacted by the Legislature of the State of Texas, that the Governor is hereby authorized to have assessed and collected upon all the real property within this State, except such as may have already been assessed and the tax thereon collected by the officers of the United States Government, a tax of twenty-eight cents on each one hundred dollars of value of such property for the year 1861, to enable this State to pay its proportion of said tax, and for which purpose he is hereby authorized to take such steps as may be necessary to accomplish that purpose within the time specified in said Act.

SEC. 2. That in the event said tax shall be insufficient to meet the demands of the United States Government on the first day of January, 1868, upon this State, the Governor is hereby authorized, if practicable, to make up any deficiency which may be found to exist on that date, from any

moneys belonging to the State revenue account not otherwise appropriated, and shall continue such assessment and collection until the same is completed.

#### EXHIBIT No. 44.

#### STATE OF GEORGIA—DIRECT TAX ACT.

Mr. Hampton. Yesterday I asked that Order of Business No. 1310, being the bill (S. 2457) for the relief of the State of Georgia, should be passed over informally, as I had some facts that I meant to submit. I ask to call it up now, and crave the indulgence of the Senate to let me offer an amendment, and state some facts that I wish to present, and then the bill may go over for future consideration.

The President *pro tempore*. The Senator from South Carolina asks the Senate to proceed to the consideration of the bill referred to with a view to submitting some remarks, and then have it go over. Is there objection? The Chair hears none.

The Senate, as in Committee of the Whole, proceeded to consider the bill (S. 2457), for the relief of the State of Georgia.

Mr. Hampton. I offer an amendment to the bill, which I ask to have read.

The Chief Clerk. It is proposed to strike out all after the enacting clause and to insert the following:

That it shall be the duty of the Secretary of the Treasury to credit to each State and Territory of the United States and the District of Columbia a sum equal to all collections made from said States and Territories and the District of Columbia, under the Act of Congress approved August 5, 1861, and the amendatory Acts thereto, with such additional credits as under said Act they are entitled to have in consequence of having paid any portion thereof without expense of collection to the United States; and such sums also as have been collected from lands or owners thereof under supplemental Acts on any account whatever.

SEC. 2. That all moneys still due to the United States on the quota of direct tax apportioned by section eight of the Act of Congress approved August 5, 1861, are hereby remitted and relinquished.

SEC. 3. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to reimburse each State, Territory, and the District of Columbia for all money found due to them under the provisions of this Act; and the Treasurer of the United States is hereby directed to pay the same; provided, that when the sums, or any part thereof, credited to any State, Territory, or the District of Columbia have been collected from any citizen thereof, either directly or by sale, resale, or lease of property, such sums shall be held in trust by such State, Territory, or the District of Columbia for the benefit of those of its citizens from whom it was collected, or their legal representatives.

Mr. Hampton. I ask the indulgence of the Senate for a few minutes that I may present some facts in support of the substitute for the bill reported from the Judiciary Committee by the senior Senator from Mississippi.

The status of the direct tax under the Act of August 5, 1861, and the amendatory Acts are in very great confusion. Some of the States have paid that tax in full, having assumed its payment under the provisions of the law and received a discount which was offered to such States as would assume it, and thus avoid the expense to the General Government of collecting it by its own machinery. From other States a large portion of it has been collected, either directly from the citizens or from the sale of property; and under an utterly erroneous ruling of a former Comptroller of the Treasury, it has been treated as a debt against the States in cases in which they did not assume it; and amounts due to said States by the



General Government have been set off against it. It is perfectly clear that the tax was not a debt against the States unless under the provisions of the law they assumed its payment; and, consequently, as there could be no set-off except of claims held in "mutual right," these set-offs were in violation of law and without authority.

The bill introduced and favorably reported by the honorable Senator from Mississippi deals with this simple question of set-off, and with that alone; and while it is unquestionably proper that it should be introduced into the bill, it is manifestly unjust that it should be dealt with singly and that other cases of still greater hardship should remain undisposed of.

Three different and conflicting reports as to the status of these accounts have been furnished to the Senate from the Treasury Department, one by the present Secretary, made up by a commission in the department under his direction, one by the Commissioner of Internal Revenue, and one by the late Secretary of the Treasury, Judge Folger. These very discrepancies stated in these statements is a very conclusive reason for dealing with the whole question and making a final disposition of it at one time; and the amendment which I have offered provides for this by refunding to the States the amounts which have been heretofore collected from them and remit those which remain unpaid. This will accomplish the purpose of the bill of the Senator from Mississippi and will at the same time equalize to some extent, and so far as can now be done, the hardships which have been inflicted upon other States by the mode of enforcing this tax; and a reference to the Journals of the Senate will show that the Legislatures of several States have heretofore instructed their Senators and requested their Representatives to support such a measure as that embodied in the amendment which I have offered.

Each of the three statements to which I have referred gives approximately the same sums as having been paid by the States of Georgia and Mississippi. Mississippi's quota was \$413,084 67, upon which has been paid either by collection or by credits from amounts as due the State, as arising from the five per cents due on the sales of the public lands, \$74,742 57, leaving a balance of \$338,342 10 as a debt due by the State of Mississippi to the United States, upon which, under the ruling of the Treasury Department, there will be credited from year to year whatever sums may arise from the sale of the public lands and the swamp land interests of that State. The quota of the State of Georgia was \$584,367 33, upon which was credited, on account of recognized demands due the State of Georgia by the United States, the sum of \$74,407 75, leaving a balance as a debt due by that State, under the ruling of the Comptroller of the Treasury, of \$512,959 58. These figures are taken from the statement of the Secretary of the Treasury in answer to the Senate resolution of March 28, 1884, and are no doubt approximately correct. By the same statement it appears that the quota of South Carolina was \$363,570 67, and on account of which there has been collected from citizens as taxes, either directly from the citizens in money or by sale of their real estate, the sum of \$377,962 30, showing that as taxes the sum of \$14,390 63 has been collected from the State in excess of its entire quota.

Not only, therefore, has there been an excess of \$14,390 63 collected as taxes according to this statement over and above the entire quota of the State, in addition to a large sum paid directly to the Direct Tax Commissioners in money, but there were sold in the County of Beaufort the entire Town of Beaufort, and fifty-two thousand acres of agricultural land, which produced the long-staple sea-island cotton, were sold to realize the balance of this excessive sum. In the case of *De Treville vs. Smalls* (98 United

States, 517) the Supreme Court held that under a special and peculiar provision of the law an absolute and incontestible title passed at these sales. This is to be taken as an accepted result. The Court of Claims has decided, in the case of *Simons vs. United States* (19 Court of Claims, 601), that a large amount of the interest thus collected was illegal and "without warrant of law;" and in two recent decisions by the same Court, which will appear in the twenty-first volume of its reports, the cases of *Seabrook vs. United States* and *Lawton vs. United States*, the Court has held that a large amount of the taxes for which this land was sold was excessive and illegally collected.

In this last case the "Hill Place," valued at \$4,400 "in proportion to the whole valuation of the State," was sold to pay the tax and bought by the United States for \$1,100 for a tax of \$170 50, whereof the Court holds that \$79 11 "was illegally collected of the claimant without warrant of law." Lawton's other place, known as the "Lawton Place," valued at \$7,200, was bought by the United States for \$3,000, and in order to redeem the same he was required to pay the sum of \$600 47; and of this collection the Court says that "a mathematical calculation shows that he should have paid only \$326 91," and that there was illegally collected of him without warrant of law the sum of \$273 91. So that this enormous amount of real estate was sold for the collection of the tax, and which was sold at so great a sacrifice, was also sold, as decided by the Court of Claims, for a tax greatly in excess of the amount with which it was legally chargeable.

What I have said showing the peculiar hardships of this matter in relation to South Carolina is equally applicable to several other States, though not in the same degree, and especially to Virginia, Tennessee, Arkansas, Florida, Louisiana, and Texas. On the other hand, it is said with great justice that the Northern and Western States, which have assumed and paid these taxes, should not be lost sight of in the adjustment of the question which releases the seceding States of the balances which were charged against them. In the right and justice of this claim I fully concur, and the amendments which I have offered fully provide for their cases, as it does for that of South Carolina and the other Southern States I have just mentioned. The statute making the original levy of \$20,000,000 to be raised by direct taxation was for the purpose of meeting a great emergency in the inception of the war between the States.

It was a mode of taxation which was not favorably received in this country, and, as I have said, was resorted to in an imminent emergency. The original Act provided for the raising of this sum annually; but it was discontinued after the first year; and on the second of February, 1867, a concurrent resolution was adopted by Congress suspending its operation for the first year, and leaving balances uncollected such as now stand against the States of Mississippi and Georgia.

In this connection I send to the desk, to be incorporated in my remarks, an extract from the letter of Hon. Charles J. Folger, late Secretary of the Treasury, upon this subject, dated June 14, 1884, in which he earnestly recommends the passage of a bill in all material respects identical in its provisions with the amendment which I have presented.

The extract referred to is as follows:

The purpose of the bill is to relieve and discharge from further liability for that tax those States and Territories which have not paid the portion thereof apportioned to them respectively; and to repay, out of any money in the Treasury not otherwise appropriated, to those States and Territories which have paid any portion, the sums by them respectively paid. Though, by the Act above cited, this tax was made an annual one, an attempt to collect it for more than one year has never been made. By that attempt there were

collected about \$15,000,000, principally from the States which did not seek to go out of the Union; and there were left uncollected about \$5,000,000, principally in the States which did seek to go out of the Union. The sum uncollected remains a charge against these States, and, for the purposes of this letter, it may be assumed that it is a valid and enforceable charge. It is plain, however, that no legislator at this day would propose to raise revenue by a tax of that kind. There is no need of resorting to such methods. The revenue of the Government from sources not so extraordinary and collectible by means and appliances not so objectionable as those involved therein, are ample for its purposes. They are, indeed, superabundant, and the concern of statesmen is rather how they may be reduced than how they may be increased. The Government then needs not the money to be got by enforcing this tax.

At the same time, it is plain that to enforce it would put a grievous burden upon the people of the States which are in default in payment. It needs no array of facts to show. Congress in one if not both branches has this session considered the proposition of large pecuniary aid to these people to help them place and keep up common schools, and the Senate has passed a bill therefore.

If there be need for that succor, there would be harm in enforcing this charge. It is to be considered, too, that while taxes are seldom looked upon with favor, this would be specially objectionable. The purpose for which it was laid can but be remembered with distaste. It can scarcely be expected that there would be cheerful aid from the State authorities in the enforcement of it. It may be doubted whether there would be any. Indeed it would, without further legislation, have to be enforced by the machinery provided by the Act under which it was laid. This would call for the appointment of numerous Federal officials, who would go among the people as obnoxious exactors. I think it must be conceded that there is, and ever will be, great reluctance to ever setting about the collection of this tax. That it never had great favor is shown by that it was never put in force but one year. In practical effect, then, the law for it is obsolete. Why, then, should there remain this unenforced liability, a menace to the people, the enforcement of which is called for by no public need, nor by any public opinion?

In my judgment the people and the property of the States in default should be relieved and discharged from it.

But to give such relief and discharge would be to put an inequality of burden upon the States which paid, unless they, in turn, were in some way relieved. This the bill proposes to do by repaying to them the sums received from them. Assuming that the tax was lawful and the collection, as far as made, was warranted, this, apart from the circumstances, would be a proposition to donate to the States surplus moneys of the United States—a proposition which I should not favor. But, as connected with the proposition to discharge from onerous and needless liability one portion of the people, it takes on a different character; it is presented as an adjustment between different bodies of the people, and is worthy of acceptance. Indeed, it would be unjust to the people of the loyal States to release the people of the once insurrectionary States from their liability, without refunding to the former the sums paid by them, and there are analogies in the legislation of Congress.

Acts have been passed refunding to States moneys raised by them for the raising, arming, and equipping of troops for the army of the United States in the civil war, and for making other refunds of like character. The purpose of laying this direct tax was to aid in the ultimate payment of the extraordinary expenses of the Government caused by the civil war. The raising, arming, and equipping of troops by the States served to keep down those expenses for the time. It was a voluntary act upon the part of the States. There is no violation of principle or fundamental law in repaying to the States from the funds of the United States the cost thereof. The purpose and effect of this bill is not so unlike in nature to that as not also to be freed from the objections to a bald distribution among the States of what are called the surplus revenues of the United States.

Under the peculiar facts of the case, and as it is not likely to become a precedent for other disposals of Federal moneys, my judgment is, that the proposed measure is a good one. It is true that exactly equal justice can not be done in carrying out the proposition of the bill. Thus, in some of the Southern States, the tax was to some extent enforced. Tax sales were made of pieces of real estate in instances for less than the value of them. Only the surplus of purchase money over the tax and charges has been available to the owners, and they have lost the difference between that and the total of the purchase money, and between the purchase money and the real value.

On the other hand, in most, if not all, of the Northern States the payment to the United States of the tax was assumed by the State government, which collected the amount of its own people in its own tax levy. Of course, in the changes of citizenship and ownership of taxable property, while a repayment into the State Treasury will tend to reduce the amount of State tax, it will not inure to the benefit of some of those who in 1861 were taxpayers. But these failures of full and general compensation in dealing with transactions so long past must ensue, and are not to be potentially urged against proposed measures, which in the main do work equal benefit.

Mr. Hampton. I also request the insertion in my remarks of the extract from the letter of the Hon. William Lawrence, late Comptroller of the Treasury, to the Secretary, in regard to the same bill.

The extract is as follows:

The object of these bills is to remit so far as not collected or paid, the direct taxes laid upon and apportioned to the States, Territories, and District of Columbia, under the Direct Tax Act of August 5, 1861, and to refund to such States, Territories, and District, respectively, the amount of such taxes, so far as paid in any mode whatever.

I have considered the subject with care, and now have the honor to state that, in my judgment, it is alike just, judicious, and practicable to remit all such taxes not yet collected, to refund the amounts paid in any form by any State or Territory, and to refund to private persons or their legal representatives all amounts of such tax by them paid, or collected by sale of real estate, or otherwise.

Mr. Hampton. I call attention to the additional fact, that besides the sum already mentioned in excess of the quota of South Carolina the Government has realized from profits on purchase and resales of land the sum of \$315,677 86, and still holds upward of four thousand acres of valuable sea-island cotton lands as military reservations.

The President *pro tempore*. The bill will go over under the rule, and the next case will be stated.

### EXHIBIT No. 45.

#### DIRECT TAX OF 1861.

Mr. Henley also submitted the following resolution; which was referred to the Committee on Ways and Means:

*Resolved*, That the Secretary of the Treasury be and is hereby requested to furnish the House of Representatives with a tabulated statement showing as follows, to wit: The amount of money apportioned to and assessed upon the several States and Territories and District of Columbia under the Act of Congress approved August 5, 1861, and Acts supplemental thereto and amendatory thereof; the amount paid by and allowed to each thereof, with dates of each respective payment and allowance; the amount of the credits on account of the ten and fifteen per cent deduction named in said Acts, and dates of each of such credits; the amount of credits allowed each thereof from other sources, stating the source and nature and authority of such credits and dates thereof, respectively; the total amount after deducting all such credits, allowances, and deductions; the total amount paid by and the total amount due by each and all thereof, respectively, and now remaining unpaid, including all taxes, collected and uncollected, proceeds from sales for non-payment of taxes, including amounts bid in excess of taxes, purchase money refunded, and balance of proceeds from sales, as shown by the records of his department at this date.

### EXHIBIT No. 46.

Forty-ninth Congress, first session. House of Representatives. Ex. Doc. No. 158.

#### DIRECT TAX APPORTIONMENT—STATEMENT OF ACCOUNT BETWEEN THE UNITED STATES AND STATES AND TERRITORIES.

*Letter from the Acting Secretary of the Treasury transmitting, in response to a resolution of the House, a statement of account showing the apportionment of the direct tax, under the Act of August 5, 1861, among, and assessments upon and collections from the respective States and Territories; also showing claims and set-offs applied on such tax, with other information respecting said account.*

April 1, 1886—Referred to the Committee on the Judiciary and ordered to be printed.

TREASURY DEPARTMENT, March 31, 1886.

SIR: I have the honor to acknowledge the receipt of a resolution passed by the House of Representatives on the seventeenth instant, as follows:

*Resolved*, That the Secretary of the Treasury is hereby requested to furnish to the House a statement of the account, as it appears from the books of the Treasury, between the United States and the several States and Territories, of the direct tax levied and apportioned to the States and Territories by the Act of Congress approved August 5, 1861, with the balances due from or unpaid by any State or Territory to the United States, and a detailed statement of the assessment and collection of any portion of said tax in any State or Territory; also a statement of any set-off of claims due to the States and Territories, and applied on such tax, together with such information as will show the condition of the account.

In response thereto I have the honor to inclose a statement of the Assistant Register of the Treasury, of the twenty-second instant, showing the condition of the accounts as they appear from the books of the Register of the Treasury to date.

From this statement it appears that no distinction has been made in the sums of money charged and collected as tax, as penalty, costs, and interest, or as surplus proceeds of direct tax sales, which are now being refunded to original owners, but that the Register's books show the gross receipts under these several heads additional to the respective quotas to have been credited to the tax quotas alone, as the same have been received and covered into the Treasury. On the other hand, amounts covered in as received from the direct tax commissioners are credited to them and not credited to the States they represent. It is, therefore, manifest, that many of the amounts set forth as balances due to the United States from the States and Territories are not the amounts really due therefrom, some being much too small and others too large.

The First Comptroller having reported adjusted balances in many cases differing largely from those of the Register's Office, the Secretary of the Treasury on December 10, 1885, appointed J. H. Lichliter, V. N. Stiles, and F. Werber, Jr., as a commission to examine into, and report upon, direct tax accounts, with a view to an early readjustment thereof. This commission proceeded to investigate all of the books and papers relating to the direct tax accounts, and on the twentieth ultimo made a report to the Department suggesting changes in many of the adjustments heretofore made.

A copy of this report, which has not yet been adopted by the Department, is herewith transmitted, together with copies of letters of the Acting Commissioner of Internal Revenue upon the same subject.

Respectfully, yours,

C. S. FAIRCHILD, Acting Secretary.

The Speaker of the House of Representatives.

*Statement of the Condition of the Direct Tax Accounts of the several States and Territories and the District of Columbia, under Acts of August 5, 1861, and June 7, 1862, as appears from the books of the Register of the Treasury to date.*

15 per Cent Allowance.	State or Territory.	Amount Imposed.	Amount Collected.	Balance Due United States.
	Alabama	\$529,313 33	\$18,285 03	\$511,028 30
	Arkansas	261,886 00	184,082 18	77,803 82
*	California	254,538 67	254,538 67	
	Colorado	22,905 33	22,189 96	715 37
\$46,232 10	Connecticut	308,214 00	261,981 90	
	Dakota	3,241 33	3,241 33	
+4,350 50	Delaware	74,683 33	70,332 83	
	District of Columbia	49,437 33	49,437 33	
	Florida	77,522 67	43,529 81	33,992 86
	Georgia	584,387 33	106,963 17	477,404 16
171,982 70	Illinois	1,146,551 33	974,568 63	
135,731 30	Indiana	904,875 33	769,144 03	

*Statement of the Condition of the Direct Tax Accounts—Continued.*

15 per Cent Allowance.	State or Territory.	Amount Imposed.	Amount Collected.	Balance Due United States.
\$67,813 20	Iowa	\$452,088 00	\$384,274 80	
*	Kansas	71,743 33	71,743 33	
107,054 30	Kentucky	713,695 33	606,641 03	
	Louisiana	385,886 67	268,515 12	\$117,371 55
63,123 90	Maine	420,826 00	357,702 10	
65,523 50	Maryland	436,823 33	371,299 83	
123,687 19	Massachusetts	824,581 33	700,894 14	
75,264 50	Michigan	501,763 33	426,498 83	
16,278 60	Minnesota	108,524 00	92,245 40	
	Mississippi	413,084 67	101,717 04	311,367 63
114,169 10	Missouri	761,127 33	646,958 23	
	Nebraska†	19,312 00	19,312 00	
*	Nevada	4,592 67	4,592 67	
32,761 00	New Hampshire	218,406 67	185,645 67	
67,519 17	New Jersey	450,134 00	382,614 83	
	New Mexico§	62,648 00	62,648 00	
390,587 81	New York	2,608,918 67	2,213,330 86	
	North Carolina	576,194 67	386,194 45	190,000 22
235,073 40	Ohio	1,567,089 33	1,332,025 93	
*	Oregon	35,140 67	35,140 67	
292,007 90	Pennsylvania	1,946,719 33	1,654,711 43	
17,544 56	Rhode Island	116,963 67	99,419 11	
	Tennessee	669,498 00	387,734 31	281,763 69
	Texas	355,106 67	130,008 06	225,098 61
	Utah	26,982 00		26,982 00
31,660 20	Vermont	211,068 00	179,407 80	
	Virginia	729,071 02	515,569 72	213,501 30
27,172 72	West Virginia	208,479 65	181,306 93	
	Washington	7,755 33	4,268 16	3,487 17
39,346 43	Wisconsin	519,688 67	454,944 84	25,397 40
	South Carolina	363,570 67	377,961 30	†

\* Payments made on account, fifteen per cent allowance for cost of assuming collection, viz.:

To California, September 10, 1884, deficiency Act July 7, 1884	\$31,583 26
To Kansas, August 23, 1882, deficiency Act August 5, 1882	10,761 50
To Nevada, September 3, 1884, deficiency Act July 7, 1884	688 90
To Oregon, September 16, 1884, deficiency Act July 7, 1884	5,271 10

† In part on compromise.

Amount collected	4,281 60
Amount allowed by First Comptroller of Treasury March 27, 1884, under Act August 7, 1882	15,030 40
	\$19,312 00

§ New Mexico:

Amount allowed by First Comptroller of Treasury March 27, 1884, under Act July 1, 1862

62,648 00

| Section 1 J. R. February 25, 1867, authorized the Secretary of the Treasury to transfer \$208,479 65 of the amount originally imposed on Virginia to the State of West Virginia.

† Balance due State.

ROS. A. FISH, Assistant Register.

Treasury Department, Register's Office, March 22, 1886.

TREASURY DEPARTMENT, OFFICE OF INTERNAL REVENUE, }  
WASHINGTON, March 11, 1886. }

SIR: Your letter of the third instant, transmitting a report of J. H. Lichliter, V. N. Stiles, and F. Werber, Jr., appointed as a commission to examine into and report upon the direct tax accounts, has been received. The report is herewith returned.

The amount of direct taxes which has been paid is not stated in any summary, but I have collected from the report the amount of taxes paid and the amount of credits allowed, or to be allowed, and the amount now due, which may be summarized as follows:

State.	Quota Charged.	Amount Credited.	Amount Due.
Alabama	\$529,313 33	\$18,285 03	\$511,028 30
Arkansas	261,886 00	154,701 18	107,184 82
California	254,538 67	254,538 67	
Colorado	22,905 33	22,189 96	715 37
Connecticut	308,214 00	308,214 00	
Dakota	3,241 33	3,241 33	
Delaware	74,683 33	74,683 33	
District of Columbia	49,437 33	49,437 33	
Florida	77,522 67	4,760 30	72,762 37
Georgia	584,367 33	117,982 89	466,384 44
Illinois	1,146,551 33	1,146,551 33	
Indiana	904,875 33	904,875 33	
Iowa	452,088 00	452,088 00	
Kansas	71,743 33	71,743 33	
Kentucky	713,695 33	713,695 33	
Louisiana	385,886 67	314,500 84	71,385 83
Maine	420,826 00	420,826 00	
Maryland	436,823 33	436,823 33	
Massachusetts	824,581 33	824,581 33	
Michigan	501,763 33	501,763 33	
Minnesota	108,524 00	108,524 00	
Mississippi	413,084 67	111,038 46	302,046 21
Missouri	761,127 33	761,127 33	
Nebraska	19,312 00	19,312 00	
Nevada	4,592 67	4,592 67	
New Hampshire	218,406 67	218,406 67	
New Jersey	450,134 00	450,134 00	
New Mexico	62,648 00	62,648 00	
New York	2,603,918 67	2,603,918 67	
North Carolina	576,194 67	377,452 61	198,742 06
Ohio	1,567,089 33	1,567,089 33	
Oregon	35,140 67	35,140 67	
Pennsylvania	1,946,719 33	1,946,719 33	
Rhode Island	116,963 67	116,963 67	
South Carolina	363,570 67	222,396 36	141,174 31
Tennessee	669,498 00	392,004 48	277,493 52
Texas	355,106 67	180,841 51	174,265 16
Utah	26,982 00		26,982 00
Vermont	211,068 00	211,068 00	
Virginia	729,071 02	442,408 09	286,662 93
West Virginia	208,479 65	208,479 65	
Washington	7,755 33	4,268 16	3,487 17
Wisconsin	519,688 67	519,688 67	
Totals	\$20,000,000 00	\$17,359,685 51	\$2,640,314 49
Quota			\$20,000,000 00
Paid or credited			17,359,685 51
Amount due			\$2,640,314 49

The second column includes taxes collected, amount of fifteen per cent deduction, and credits allowed.

I substitute this account in place of the statement transmitted to you in letter of November 17, 1885.

I recommend that the report of the commission be referred to the Fifth Auditor for a readjustment of the direct tax accounts on the basis of the figures furnished in the report, and that the books of the Department be kept so that official statements of the amounts of tax collected and the amount due may hereafter agree, whether taken from the books of the First Comptroller, or of any other officer authorized to keep such accounts.

As to the accounts of the Direct Tax Commissioners, I recommend that the First Comptroller be requested, after the accounts are readjusted, to institute suits on the bonds of the delinquent Commissioners for recovery

of amounts collected by them and not accounted for, unless, in your opinion, such action is deemed for any reason unadvisable.

The report, page 17, speaks of the sum of \$1,752 52, charged in the adjusted account with the Commissioners for the State of Florida as "tax, penalty, interest, and costs, not divisible."

This office has no information which will enable it to state how much of this is tax.

As to the sum of \$4,126 to which the Commission call attention in connection with the Florida accounts, page 21, paid for redemption of certain property, I suggest that the Fifth Auditor take that into consideration in his examination, and ascertain the amount of tax included in the amount from the books on file in the department, as near as can be ascertained, giving proper credit therefor.

The views of a majority of the Commissioners as to what items are proper credits to the States (page 59) are concurred in.

I have the honor to be, very respectfully,

H. C. ROGERS,  
Acting Commissioner.

Hon. Daniel Manning, Secretary of the Treasury.

TREASURY DEPARTMENT, OFFICE OF INTERNAL REVENUE, }  
Washington, March 20, 1886. }

SIR: I have received your letter of the sixteenth instant, in regard to the recent decision in the Court of Claims, in the case of Cato A. Seabrook, Administrator, etc., vs. The United States, as affecting the amount of direct tax due from the State of South Carolina, according to the report of the Commission which has recently been investigating the direct tax accounts.

In reply, I have the honor to state that in my opinion it is feasible to obtain from the direct tax books relating to the assessment and collection of direct tax in South Carolina, which are on file in this office, and other offices in the Treasury Department, a statement of the direct tax held to have been illegally collected by the decision above referred to, at least approximately.

The Direct Tax Commissioners assessed a tax upon city, town, village, and borough lots of 80 cents ad valorem on each \$100 of valuation, and on other property \$2 ad valorem on each \$100 of valuation.

This was decided by the Court to have been an erroneous method of assessment.

The assessment should have been uniform throughout the State.

In my opinion this decision should be allowed to stand as final instead of being carried to the Supreme Court.

I would suggest that in the readjustment of the accounts, as proposed, the Fifth Auditor be requested to take into consideration this decision in determining the balance of direct tax due from the State; and I would also suggest that the Commission which has been occupied for several weeks on this matter of direct tax accounts, and are familiar with the books and papers relating to the subject, would be suitable persons to obtain the data desired.

Very respectfully,

H. C. ROGERS,  
Acting Commissioner.

Hon. Daniel Manning, Secretary of the Treasury.

## REPORT OF COMMISSION ON DIRECT TAX ACCOUNTS.

TREASURY DEPARTMENT,  
WASHINGTON, D. C., February 20, 1886.

SIR: The undersigned, designated by your letter of the tenth of December, 1885, "to make an investigation into the direct tax accounts for the purpose of obtaining an early adjustment thereof, with instructions to examine into the entire matter of the direct tax accounts as between the Direct Tax Commissioners and the States for which they acted, also between the United States and all the States and Territories concerned, and to report the result of the investigation, with such suggestions as you [they] may see proper to make," have the honor to submit the following report:

One of the first questions presented was as to the scope of the investigation. After discussion and conference upon the subject it was decided, from what seemed to have been the object in requesting the appointment of this Commission, that it was not intended to go back of settlements of accounts heretofore certified by the Honorable First Comptroller of the Treasury, unless clerical errors should be discovered in the accounts, or there should be found some new matter to act upon which would change or correct items in these accounts, and that the province of the Commission was simply to receive this new matter, if any, from the Commissioner of Internal Revenue, consider and report any additional credits to which the States and Territories, or Direct Tax Commissioners, have become entitled since the several adjustments of accounts were made, and to report how may be reconciled the difference between the several offices of the department as they appear in statements prepared from the books of the offices.

Proceeding upon this view, it was found that the quota of the direct tax apportioned to each of the following States has been paid: California, Connecticut, Dakota Territory, Delaware, District of Columbia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, West Virginia, and Wisconsin, if the recommendations herein made in relation thereto be approved.

The account with the State of California has been balanced since March 29, 1884, the date of the letter of the Honorable Secretary of the Treasury hereinafter referred to.

Hereto appended as part of this report are presented condensed statements of the accounts with the several States and the Direct Tax Commissioners for the "insurrectionary districts" as they have been adjusted and certified by the Honorable First Comptroller of the Treasury, and with several of them statements of the accounts as this Commission, from examination of the books and papers accompanying the accounts, consider that they should have been adjusted; and it is recommended that the accounts be readjusted according to these figures.

Where no remarks upon the accounts are made they should be considered as approved by this Commission.

In connection with the statements of the accounts suggested by the Commission, which, if adopted, would make certain corrections in the accounts as adjusted, the following remarks under the name of each State are to be taken as furnishing explanations of the changes made, and also of the difference between the balances due from some of the States as found by the Commission and hereinafter stated, and the balances due from these States as given in the statement accompanying the letter of the honorable Secretary of the Treasury, dated March 29, 1884, addressed to Hon. George F. Edmunds, President *pro tempore* of the United States Senate, printed in Senate Ex. Doc. No. 142, first session Forty-eighth Congress.

This statement of the honorable Secretary, showing the balances due at that date from the several States, it is learned was based upon the accounts as shown by the books of the office of the Register of the Treasury. These balances appear in some instances to be the difference between the quota apportioned to each State and the amount of cash deposited in the Treasury by the Commissioners for the State, regardless of the source from which this money was derived, of the items of expense in collecting the same, and of the balances due from the Commissioners for several of the States; while in other instances they are the difference between the quota of the State and the amount of cash deposited and formally covered into the Treasury by warrants in the name of the State, without regard to the cash deposited and covered in by warrants in the names of the Commissioners. Thus, the balances reported as due in some cases are too large, and in others they are too small. These facts should be borne in mind when comparing the balances due from the States as herein found with the balances given in the honorable Secretary's statement.

## ALABAMA.

From the records it appears that no collections on account of the direct tax were made in the State of Alabama, for the reason that only two Commissioners were appointed and qualified, and they were instructed from the Internal Revenue Office that until a third Commissioner should be appointed they could only perform such work as was of a preliminary character, as the collection of data for the assessment of the tax.

Therefore no account appears with the Commissioners for this State.

Upon examination of the books of the Department it has been found that the amounts of \$8,491 46 and \$9,793 57, making the total sum of \$18,285 03, due to the State of Alabama on account of two per cent and three per cent on net proceeds of certain sales of

public lands within its limits, under Acts of March 2, 1819, and September 4, 1841, have been carried to the credit of the State on account of the direct tax, though accounts have not yet been adjusted formally taking up these amounts.

The second of these amounts has become due to the State since the date of the letter of the honorable Secretary of the Treasury, above referred to, and will reduce the balance due from the State as reported by him to the amount hereinafter stated as due.

## ARKANSAS.

The account of the Commissioners for the State of Arkansas is stated with only two of them. The record of "Decisions of Commissioners, Arkansas," from November 9, 1865, to May 25, 1866, shows that a third Commissioner was acting and took part in the meetings of the Board during that time, and other papers and records with the account and in the Internal Revenue Office indicate that he entered upon the duties of his office about May 15, 1865. It does not appear why this third Commissioner was not also charged in the account adjusted, and it is recommended that this question be considered in connection with the readjustment of the account.

In the statement of the account with these Commissioners as made by this Commission, the amount found for the item "tax uncollected" differs from the amount found in the account as adjusted by the sum of \$501 90, which difference is thus explained:

Tax on land sold and not considered in account adjusted.....	\$566 86
Less tax on land sold and redeemed, and which was credited in the adjustment....	64 96
	<u>\$501 90</u>

In the account adjusted the amount of tax upon the lands sold, except the amount of \$64 96 as above stated, was not deducted in order to find the balance of tax remaining uncollected, but was charged to the Commissioners as part of the gross amount of "proceeds of sales of land," and thus was practically twice charged to them, having been first charged in the quota apportioned to the State.

An error similar to that appearing in this adjustment occurs in each of the accounts as adjusted with the Commissioners for the States in which there were sales of land for taxes, and comes from the failure to consider that the amount of tax assessed upon the lands sold for non-payment thereof within the time prescribed by law was properly to be deducted from the quota apportioned to the State, and in so far treated separately and distinct from the other items constituting the charges covered by the proceeds of sales. These errors in the accounts will be pointed out in the remarks made in connection with each State, but this brief general explanation as to the origin of the errors is intended to apply to all of the accounts.

In the adjustment of this account, among the items suspended for which the Commissioners claimed credit were the following:

Amount of property sold and redeemed before purchase money was paid.....	\$4,845 00
Amount of property sold and redeemed after purchase money was paid.....	3,949 17
Amount of interest paid to purchasers of property after purchase money had been paid.....	48 31
	<u>\$8,842 48</u>

These items were suspended because, in the first two cases, copies of the certificates of redemption were not furnished, and, in the last, "satisfactory evidence of payment" was not furnished. When it is considered, however, that allowance was made to the Commissioners for a sum of \$18,600 upon their statement that sales to this amount were not completed by the payment of the bids, it is thought that the above items could be allowed upon the same evidence, and this evidence is regarded by the Commission as sufficient now to allow credit therefor in view of the impracticability of securing better evidence after such a long lapse of time, and the probability that if the property had not been redeemed and the purchase money repaid, with interest thereon, claims would have been presented to the Department for surplus and purchase money.

Therefore allowance of credit to the amount of \$8,842 48 is recommended upon readjustment of the account; and if this credit be allowed, the balance due from the Commissioners to the United States will be reduced to \$7,884 28.

A comparison of the Register's books with the adjustment of the account of the Commissioners for Arkansas shows that deposits of the sums of \$2,400 and \$254 26, made by the Commissioners, were covered into the Treasury by Internal Revenue warrants No. 363, third quarter 1865, and No. 241, second quarter 1866, respectively, which have not been credited on the Register's books for the apparent reason that the warrants were not issued in the name of the State.

## COLORADO.

The amount of \$20,673 07 has been found due to the State of Colorado for taking the "interdecennial census," under Act of March 3, 1879, and has been ordered to be carried to the credit of the State on account of the direct tax, which will reduce the balance due from the State to the sum hereinafter stated.



## DAKOTA.

The sum of \$35,506 89 has been found due to Dakota Territory for taking the "inter-decennial census," under Act of March 3, 1879, and the amount of \$3,241 33 from this sum has been ordered to be carried by adjustment to the credit of the Territory in full payment of the direct tax apportioned to it.

## FLORIDA.

In the adjustment of the account with the Commissioners for the State of Florida an error of \$1,645 57 appears on the credit side and in the balance stated as due from them to the United States, which arises from the fact that the Commissioners were charged with this amount in the proceeds of sales. The tax assessed upon the property sold to private parties should have been deducted from the proceeds of sales, and the amount of tax upon the property bid in for the United States should also have been credited. The statement of the account presented by this Commission, which is based upon the figures found in the adjustment of the account (except the several items of tax upon lands sold), shows the changes which it is thought should be made in readjusting the account.

The item of \$1,752 52 charged in the adjusted account as "tax, penalty, interest, and costs not divisible," is made up of several sums of money which the records of the Commissioners show they received, but the entries in the records do not indicate what proportion of this amount was paid for each of those charges separately, and it is possible that the whole amount may have been paid as tax.

The charge against the Commissioners of the sum of \$4,126, and the credit of the same sum deposited by them, appears to be for money paid by the trustees of the Florida Railroad Company in redemption of certain lots of land claimed to be owned by the company in Fernandina, Florida, and which had been sold for taxes unpaid. From the papers and facts in the case it cannot be determined how this money has been regarded by the officers of the Department, whether as a payment of the tax, penalty, interest, and costs charged upon the land, or as made in redemption of the lands after sale, or as an amount erroneously received and deposited by the Commissioners and subject to claim for refund thereof. The best information obtainable is that the lots claimed by the Florida Railroad Company were sold for taxes unpaid, some of the lots being purchased by private parties and others bid in for the United States; that subsequently—but after a lapse of more than sixty days from the date of sale—the trustees of the company paid the sum mentioned to secure the redemption of the lots, and the same was received by one of the Commissioners, subject to the approval of his associates and the Department; that the Department decided, after taking the opinion of the Attorney-General of the United States, that under the facts and the law, the lots could not be redeemed as proposed by the trustees acting for the company; that the trustees refused to receive back the money at the request of the Commissioners, and it was therefore forwarded to the Department for deposit; and that the lots have been, since about that time, and are now, in the possession of the company.

It appears from a certificate of the Commissioner who received the money that \$3,125 80 was paid to cover the tax, penalty, interest, and costs due upon the lots, and, in the language of the certificate, "an additional sum of \$1,000, out of which is to be paid whatever additional amount may be found due for costs in the redemption of said lots, which costs may have been omitted in the within account, if there should be any, and also to pay any deficiency that may be discovered in making up the account, the remainder, if any, to be restored to the said John McRae, trustee."

It is recommended that the question of the proper application of this money be considered and determined, and if legislation be necessary for this purpose, that it be requested.

Special attention is called to these two sums of \$1,752 52 and \$4,126 for the reason that the amount of tax included and paid therein has not been credited upon the quota apportioned to the State of Florida, and it is believed that upon readjustment of the account credit should be given for this amount, and, if from the records the actual sum of the tax cannot be found, that it should be determined by some equitable method of proportion.

The amount of "tax uncollected," as shown in the statement of the account by this Commission, will be reduced by whatever sum may be allowed as tax in these two items.

An examination shows that the sum of \$905, deposited by the Commissioners for Florida, and covered into the Treasury by warrant No. 2, second quarter, 1864, has not been credited to the State on the Register's books for the apparent reason that the warrant was not issued in the name of the State.

## GEORGIA.

On May 12, 1883, the honorable First Comptroller decided that the sum of \$35,555 42, appropriated by the Act of March 3, 1883, to "refund to the State of Georgia certain money expended by said State for the common defense in 1777," should "be paid to the Treasurer of the United States, to be by him deposited to the credit of the State of Georgia on account of direct taxes charged against the State." This amount has not yet been formally carried by adjustment to the credit of the State in accordance with his decision, but when this shall have been done the amount of "tax uncollected," as shown by the account adjusted with the Commissioners, will be reduced to \$466,384 44.

## LOUISIANA.

Attention is called to the fact that the State of Louisiana has a claim against the United States for five per cent on net proceeds of sales of public lands within its limits, and the amount due thereon has been ascertained to be \$21,769 25 upon an account now held in the office of the First Comptroller awaiting an appropriation by Congress for payment of the same. This amount will be subject to a deduction on account of an unascertained sum (about \$2,000) due from the State for interest upon certain bonds held by the United States. The balance will probably be carried, under decisions of the honorable First Comptroller, to the credit of the State on account of the direct tax apportioned to the State and remaining unpaid.

## MISSISSIPPI.

The sum of \$41,453 91 has been found due to the State of Mississippi for two per cent and three per cent on net proceeds of sales of public lands within its limits, which has not yet been formally carried by adjustment to the credit of the State on account of the direct tax.

## NORTH CAROLINA.

No change is recommended in the accounts adjusted with the Commissioners for the State of North Carolina.

## SOUTH CAROLINA.

In the adjustment of the account with the Commissioners for the State of South Carolina, they were charged with the gross amount of the proceeds of sales of land, which included the amount of the tax assessed upon the lands sold. In order to ascertain the true amount of the tax remaining uncollected the tax upon the lands sold should have been deducted from the quota apportioned to the State. This amount is found to be \$1,973 29. As the bidding in of property at the sale for the United States worked an extinguishment of the charges against the property sold, the amount of the tax assessed upon this property should also have been deducted from the quota. This amount is \$9,881 75.

Upon the examination of this adjustment it is found that the Commissioners have been twice charged with the sum of \$248 as the tax collected upon three plantations in Saint Luke's Parish. These three items were entered in two books, and the accountants charged them without observing that the entries were duplicated.

In the statement of the account presented by this Commission, these errors are corrected, and the item of "tax uncollected" is reduced from \$152,781 35 to \$141,174 31.

In the statement accompanying the honorable Secretary's letter of March 29, 1884, it is represented that the State of South Carolina has paid the sum of \$14,390 63 in excess of the quota apportioned. The amount paid as shown by the statement is \$377,961 30. Attention is called to the remarks hereinbefore made as to the source from which his statement was compiled. The account with the Commissioners for this State shows more clearly, perhaps, than any other the differences which may arise from different methods of bookkeeping. The account, as adjusted, shows a much larger sum, to wit, \$471,378 59, as cash deposited and transferred, than even that given in the statement, but some of the deposits appear to have been made in the name of the State and others in the name of the Commissioners, and these were carried to different accounts upon the Register's books.

The amount paid as given in the statement of the honorable Secretary is the sum of these deposits made in the name of the State. The deposits, however, shown by the account, and also those carried upon the Register's books, represent collections made by the Commissioners from all sources, and embrace amounts received, in addition to tax, as penalties, interest, costs, proceeds of sales and redemptions, and resales of property originally bid in for the United States, rents, etc.

The amount collected as tax can be determined only by the proper adjustment of the account, and this amount deducted from the quota apportioned to the State will give the balance of tax uncollected. Therefore an account which shows the deposits from all sources without distinguishing them will not show the amounts of tax paid and remaining unpaid.

The Court of Claims in the case (No. 14189) of *Cato A. Seabrook, Administrator of James B. Seabrook, vs. The United States*, recently decided that certain amounts collected as tax, penalty, interests, and costs had been erroneously collected by reason of the adoption by the Commissioners for the State of South Carolina of two rates of assessment, one rate for town lots and a different and higher rate for the other lands. Whatever sums collected as tax may be refunded to taxpayers of South Carolina in pursuance of this decision, or for any other reason as erroneously or illegally collected, will change the balance of tax yet due from the State as herein reported.

## TENNESSEE.

In the account adjusted with the Commissioners for the State of Tennessee they were charged with the gross proceeds of sales of property to individuals, including the tax assessed upon the lands sold. From statements of the Commissioners accompanying the account it is learned that the amount of the tax upon lands sold to private parties was \$9,728 93, and the tax upon the lands bid in for the United States was \$1,728 73. In the adjustment the Commissioners should have been charged with the proceeds of the sales of lands exclusive of the amount of the tax upon the lands sold, and they should have



been credited with the sum of the tax assessed upon the lands bid in for the United States, and these two items of tax should have been added to the amount of tax found to have been collected before sale, and the whole sum deducted from the quota in order to determine the balance of tax uncollected.

This Commission presents, in connection with the adjusted account, a statement of the account as it should be readjusted to correct these errors. By warrant bearing date of September 30, 1885, the sum of \$12 25 was covered into the Treasury as received by one of the collectors of internal revenue in Tennessee on account of the direct tax. This amount will be carried by formal adjustment to the credit of the State, and it has been considered in finding the balance due, as stated by this Commission.

#### TEXAS.

From correspondence filed with the account adjusted with the Commissioners for the State of Texas it appears that immediately after the assessment of the tax upon the lands within the State, and notice that the same was due and payable, the Commissioners began to collect not only the tax, but also penalty, interest, and costs, without allowing to the land owners the sixty days provided in Section 3, of Act of June 7, 1862, for the payment of the tax without penalty, interest, and costs. This practice of the Commissioners was called to the attention of the Commissioner of Internal Revenue by parties interested in the subject. That officer, in a letter dated May 17, 1866, to one of the Commissioners for Texas, and in a letter in response to the complaint of a land owner, indicates that the erroneous construction of the law by the Commissioners, which was evidenced by their practice in making collections, was due to the fact that from inadvertence these Commissioners had not been furnished with a copy of the general instructions which had been prepared by the Internal Revenue Office, in the first instance, for the guidance of the Commissioners for the State of Virginia, and copies of which had been transmitted to the Commissioners for the other States. These general instructions were as follows:

#### TREASURY DEPARTMENT, OFFICE OF INTERNAL REVENUE, } May 2, 1863. }

GENTLEMEN: Your letter of the twenty-eighth ultimo, to the Hon. S. P. Chase, Secretary of the Treasury, submitting several questions in regard to the true construction of certain sections in the Act of June 7, 1862, and the Act of February 6, amendatory thereto, has been referred to me for an answer. Having considered the subject I give my answer in the following terms, to the several questions propounded.

*First*—The last assessment of the lands under the authority of the State or Territory previous to the first of January, 1861, is to be taken as the basis for ascertaining the direct tax, under the Act of June 7, 1862. When the proportion of the tax to be charged upon a tract of land is ascertained, then fifty per centum of said tax is to be added and charged upon the land. This tax with the addition of fifty per cent remains as a lien upon the land until it is sold or the lien otherwise discharged.

The third section provides that the owner may, within sixty days after the tax commissioners shall have fixed the amount of the tax, pay the tax charged upon the land, and take a certificate of such payment, and provides that the land shall thereupon be discharged from said tax.

The word "tax" in this section does not, in my opinion, include the fifty per cent. The owner, upon paying the amount of the tax without the fifty per cent additional within sixty days after the tax shall have been laid, is entitled to have his land free from the lien of the tax, and also free from the lien of the fifty per cent to be added thereto pursuant to the first section.

*Secondly*—The ten per cent interest mentioned in the seventh section is to be calculated from the day of the date of the laying of the tax.

*Thirdly*—The ten per cent interest mentioned in the seventh section as amended, is to be charged, not on the amount of the tax and penalty, but on the amount of the tax only. The owner who pays on or before the day of sale under the clause in the amendatory Act is required to pay the amount of the tax without the addition of fifty per cent, but with the addition of ten per cent interest on the amount of the tax with the cost of advertising in order to redeem his land. If the owner, being a loyal person of the United States, or taking oath to support the Constitution, shall pay the amount of the tax and penalty with interest at the rate of fifteen per cent from the date of the President's proclamation, together with the expenses of the sale and subsequent proceedings, he is entitled to redeem his land from sale; but such redemption will not be complete without the full payment of the whole tax and penalty with interest and expenses as aforesaid.

It will thus be seen that the Act provides for three distinct states of circumstances. If the owner appears within sixty days after the tax has been laid by the Commissioners and pays the amount of the tax only, he is entitled to redeem. If he delays to come forward until the period of sixty days has elapsed, but still offers to pay the tax with ten per cent addition, and the costs of advertising, on or before the day of sale, he is entitled to redeem. If, however, he delays to come forward until the property shall have been actually sold, he cannot redeem without paying the tax, penalty, all costs, and fifteen per cent interest from the date of the President's proclamation. In this latter case the interest is to be reckoned upon the tax and penalty added together.

Very respectfully,

JOSEPH J. LEWIS, Commissioner.

Messrs. W. J. Boreman and John Hawkhurst, Esqs., Direct Tax Commissioners for Virginia, Washington, D. C.

A copy of these instructions was forwarded May 9, 1866, to the Commissioners for Texas.

The record of the Commissioners shows that collections were commenced November 6, 1865, and that the copy of the instructions quoted above was received by them May 28, 1866, and that they at once began to comply with the same. No attempt has been made to determine what part of the penalty, interest, and costs charged to the Commissioners in their account was collected by them within sixty days after the tax was fixed and assessed. It is believed, however, that this amount can be ascertained if necessary from the land books showing the dates of payment of the several assessments.

On September 24, 1870, upon the application of a land owner in Texas, to have refunded certain amounts paid by him in addition to tax as penalty, interest, and costs, the honorable First Comptroller of the Treasury decided that the amount paid as penalty could not be refunded, saying: "Under these provisions of law [Sections 1 and 3, Act of June 7, 1862], my opinion is that the fifty per cent was a fixed addition to the tax, to be paid in any event, whether payment was made within the sixty days or subsequently to their expiration."

It is understood that under this decision a considerable number of claims has been presented by taxpayers of Texas and allowed for interest and costs erroneously collected by the Commissioners, but no allowance has been made on account of penalty collected.

In the case of *De Treville vs. Smalls*, 98 U. S., 527, October Term, 1878, the question whether by the Act of June 7, 1862, the penalty of fifty per centum of the tax was made an original charge upon the lands, and to be collected in all cases, irrespective of allowance of any time for the payment of the tax, seems to have been directly before the Supreme Court of the United States, and it was decided in this language:

"One other assignment only remains. It is that the Acts of Congress were unconstitutional, because the amount of the direct taxes apportioned to the State of South Carolina was increased by the addition thereto of a penalty of fifty per cent, and therefore was not in proportion to the census or enumeration directed to be taken by the second section of the first article of the Constitution.

"The assignment rests upon a mistaken construction of the Acts of Congress. It is true that direct taxes must be apportioned among the several States according to the population.

"The Acts of August 5, 1861, June 7, 1862, and February 6, 1863, did so apportion the tax. The fifty per cent penalty was no part of it. The Act of Congress of 1861, which levied the tax, provided for no penalty, except for failure to pay it when it was due; and the penalty charged by the Acts of 1862 and 1863 was also for default of voluntary payment in due time. A careful reading of the Acts makes this very plain. Throughout a distinction is made between the tax and the added penalty; it is recognized in the first section of the Act of 1862, in the second, and in the third, as well as elsewhere. By the third section the owner of the lots or parcels of land was allowed to pay the tax charged thereon (not the tax and penalty), and take a certificate of payment, by virtue whereof the lands would be discharged. It cannot, therefore, be maintained that the tax was in conflict with the Constitution."

Attention is called especially to this subject, because nothing similar has been found in connection with any other State, and it is clear that if any part of the penalty, as well as interest and costs, has been erroneously collected, it should be refunded upon claims properly presented.

#### UTAH TERRITORY.

The whole amount of the tax apportioned to the Territory of Utah remains unpaid.

#### VIRGINIA.

In the adjustment of the accounts with the Commissioners for the State of Virginia the correct principle was adopted of deducting the amount of tax upon the lands sold from the proceeds of sales and crediting the Commissioners with the amount of the tax upon lands bid in favor of the United States. In the first account, however, this principle was not carried out so as to deduct the amount of tax on sales to private parties from the tax apportioned to the State in order to find the balance of tax uncollected and transferred to the new Board of Commissioners. Land Books Nos. 1, 2, and 3 for Alexandria City and County show the collections of tax without sale; and the amount of tax (\$171 03) on lands sold to private parties is in addition to these collections.

The proper readjustment of this account will therefore show a balance due from the Commissioners to the United States of the sum of \$171 03.

The error in this account affects also the account adjusted with the second Board of Commissioners, as it will diminish the amount of uncollected tax transferred to them. In the adjustment of the account with this Board the gross amount of the tax upon the lands sold by these Commissioners was deducted from the proceeds of the sales to private parties without noting that part of this amount was tax upon lands bid in for the United States, and part of it the tax upon lands the sales of which were never completed.

These two sums are found to be respectively \$155 96 and \$51 27. The Commissioners have been credited with the sum of \$112 56 "as amount of taxes on lands sold and bid in for the United States."

The several errors appearing in these two accounts it is believed will be corrected upon readjustment of the accounts in accordance with the statements of the same as made by this Commission.

## WASHINGTON TERRITORY.

No change is recommended in the account with Washington Territory.

## WISCONSIN.

In the adjustment of the account with the State of Wisconsin (Report No. 10, 817) it appears that the sum of \$262,309 55 was allowed as cash deposited, and fifteen per cent on this sum, to wit, \$39,346 43, was credited as commissions. This allowance as "commissions" was made under Section 53 of the Act of August 5, 1861. It is submitted, however, that the law contemplates the fifteen per cent "deduction," as it is therein called, in the nature of discount rather than of percentage on the payment made, and that the credit to which a State is entitled upon making a given partial payment within the proper period, is a sum which, were it reduced by fifteen per cent, would leave as a remainder the amount paid. This "deduction" was to be allowed, under the law, upon the payment of the whole or a part only of the quota apportioned to the State, or upon the formal and proper release of any liquidated and determined claim of such State against the United States. An examination of the accounts adjusted with all of the other States entitled to receive the fifteen per cent deduction upon payments made on account of the tax, shows that the method of adjustment here pointed out in relation to this deduction was pursued, and there is no apparent reason why that method was not observed in adjusting the account with the State of Wisconsin.

It is recommended that the further sum of \$6,943 49 be credited as commissions upon this account for the reasons above stated.

In the adjustments of the following accounts, all of which, with the exception of the first, which is a war claim, are for swamp land indemnity, these amounts have been found due to the State of Wisconsin:

No. 7,908, Third Auditor, 1875 .....	\$10,347 53	
No. 36,484, Land Office, miscellaneous .....	8,489 57	
No. 36,557, Land Office, miscellaneous .....	\$16,907 52	
No. 36,558, Land Office, miscellaneous .....	2,044 82	
No. 36,615, Land Office, miscellaneous .....	7,490 03	
	26,442 37	
No. 36,667, Land Office, miscellaneous .....	53,408 93	
No. 37,837, Land Office, miscellaneous .....	53,537 18	
Total .....	\$152,225 58	

This sum together with other items was carried to the credit of the State of Wisconsin on account of the direct tax by account No. 34,698. This amount was due to the State prior to the last day of June, 1862. As no fifteen per cent deduction has heretofore been allowed thereupon, it is recommended that the further sum of \$26,863 34 be credited to the State.

Under adjustment No. 35,468, the additional sum of \$25,748 16 has been found due to the State of Wisconsin for five per cent on net proceeds of sales of public lands, and ordered by the honorable First Comptroller to be carried to the credit of the State on account of the direct tax.

Should the credits herein suggested be allowed, in addition to the amount last aforesaid, the balance of \$51,145 56 due from the State on account of the direct tax, as shown by the last account adjusted, would be fully paid and a difference be found to the credit of the State.

The following statement shows the balance due to the United States from the Direct Tax Commissioners for the insurrectionary districts, and from the United States to the Commissioners:

COMMISSIONERS FOR—	BALANCE DUE UNITED STATES.		BALANCE DUE COMMISSIONERS.	
	As shown by Adjustments Heretofore Made.	As shown by Statements of the Accounts Suggested by this Commission.	As shown by Adjustments Heretofore Made.	As shown by Statements of the Accounts Suggested by this Commission.
Alabama .....	(*)	(*)		
Arkansas .....	\$16,726 76	†\$16,726 76		
Florida .....	4,907 73	3,262 16		
Georgia .....	344 66	344 66		
Louisiana .....	14,025 58	14,025 58		
Mississippi .....	(‡)	(‡)		
North Carolina .....	(‡)	(‡)		
South Carolina .....				\$248 00
W. R. Cloutman, Collector Internal Revenue, successor to Commissioners .....			\$255 18	255 18
A. J. Ransier, Collector Internal Revenue, successor to Commissioners .....	35 00	35 00		
Tennessee .....	(‡)	(‡)		
Texas .....	50,464 83	50,464 83		
Virginia:				
First Board .....	(‡)	171 03		
Second Board .....	(‡)			171 03

\* No collections.

† Allowance is recommended by the Commission of \$8,842 48 of this amount.

‡ Balanced.

§ Suspended.

The following statement exhibits the amounts of the direct tax which are uncollected at this date in the several States and Territories:

STATES AND TERRITORIES.	Amount Due, as found by this Commission.	Amount Due, Secretary's Statement.	Amount Due, Statement of Commissioner of Internal Revenue.
Alabama .....	\$511,028 30	\$520,821 87	\$529,313 33
Arkansas .....	107,184 82	77,803 82	107,686 72
California .....	(*)	6,597 54	(*)
Colorado .....	715 37	21,388 44	21,388 44
Dakota .....	(*)	3,241 33	3,241 33
Florida .....	72,762 37	33,992 86	72,756 26
Georgia .....	466,384 44	512,959 58	501,939 86
Louisiana .....	71,385 83	117,371 55	71,385 83
Mississippi .....	302,046 21	338,342 10	343,500 12
North Carolina .....	198,742 06	190,000 22	198,742 06
South Carolina .....	141,174 31	(‡)	152,781 35
Tennessee .....	277,493 52	281,775 94	287,963 43
Texas .....	174,265 16	225,098 61	174,265 16
Utah .....	26,982 00	26,982 00	26,982 00
Virginia .....	286,662 93	213,501 30	286,499 37
Washington .....	3,487 17	3,487 17	3,487 17
Wisconsin .....	(*)	51,145 56	51,145 56

\* Balanced.

† See statement with regard to Louisiana, ante.

‡ Overpaid by \$14,390 63.

The following remarks are to be taken in connection with this statement:

The "amount due, as found by this Commission," is based upon the statements of the accounts of the Commissioners for the several States as herein presented for readjustment and upon the allowances to be made of the several sums recommended. Should any of the accounts not be readjusted as suggested, or any of the credits recommended not be allowed, the balances found due by the Commission will be in so far changed.

They would likewise be affected by any amounts which have been, or may hereafter be, refunded as tax overpaid or erroneously paid.

The "amounts due, Secretary's statement," is taken from the statement of the honorable Secretary of the Treasury, accompanying his letter of March 29, 1884, and printed in Senate Ex. Doc. No. 142, first session, Forty-eighth Congress. In a previous part of this report the source of this statement is mentioned, and the cause of certain inaccuracies therein is pointed out.

The "amount due, statement of Commissioner of Internal Revenue," is taken from the annual report for the fiscal year ending June 30, 1885. This statement appears to have been compiled from the books of the office of the First Comptroller, showing the accounts as adjusted with the States and the several Boards of Commissioners. The amounts of tax uncollected in the "insurrectionary districts" are taken from the accounts with the Commissioners for those districts, as accounts with the districts or States have not yet been adjusted, except to charge them with the quotas of the direct tax apportioned by the Act of August 5, 1861.

The records of the office of the First Comptroller of the Treasury show that accounts were certified May 29, 1868, with all of the States (except West Virginia, which was subsequently stated), charging them with the quotas of the direct tax apportioned to them, respectively, under the Act of August 5, 1861. It is regarded as probable that at that time a formal decision was rendered by the honorable First Comptroller as to the legal liability of the States for this tax, but, if so, no record of this decision can now be found. At the present time there seems to be great conflict of opinion upon this subject among those who have been called upon to consider the question; and a reference to the debates in both branches of Congress when the original Act of 1861 was under consideration, does not serve to clear away the doubt. It is also found that the decisions of the incumbents of the office of First Comptroller have not been uniform. The States having been charged by Comptroller Tayler (in 1868), Comptroller Lawrence (in 1883), and Durham (in 1885), in decisions applying moneys due to several of the States as offsets upon the amounts of the direct tax apportioned to these States, recognized the charges as at least binding upon them as precedents; while Comptroller Porter (in 1879) decided that the States were not liable for the direct tax, but that the same was due from the land owners in the several States, and, therefore, that a sum appropriated to one of the States (Georgia) should not be credited upon the direct tax "as upon a debt owing by that State to the United States." This decision, however, does not appear to have been followed, as the practice of the office of the First Comptroller has been to credit sums due to the States upon unpaid balances of the direct tax charged to the States.

This question of the liability of the States for the direct tax, it is believed, has never directly come before any of the United States Courts.

The unanimous opinion of this Commission is that the States are not liable in their corporate capacities for the amounts of the direct tax apportioned to them, respectively. In view of the fact, however, that the States have been charged upon the books of the Treasury Department with these amounts, and that the decision making the charge governs the action of the accounting officers of the Department until reversed by proper authority, it is considered by a majority of this Commission that the accounts adjusted, and to be adjusted, as herein recommended, exhibit the balances now due from the States.

These balances, given in a preceding table, are for convenience here repeated:

States and Territories.	Amounts Due.	States and Territories.	Amounts Due.
Alabama .....	\$511,028 30	North Carolina .....	\$198,742 06
Arkansas .....	107,184 82	South Carolina .....	141,174 31
Colorado .....	715 37	Tennessee .....	277,493 52
Florida .....	72,762 37	Texas .....	174,265 16
Georgia .....	466,384 44	Utah Territory .....	26,982 00
Louisiana .....	71,385 83	Virginia .....	286,662 98
Mississippi .....	302,046 21	Washington Territory .....	3,487 17

In the case of the "insurrectionary districts," the amounts reported as due are the differences between the quotas and the tax collected, as shown by the several accounts adjusted and recommended to be readjusted with the Commissioners for the States, diminished by any sums due the States that have been, or are yet to be, offset against the tax apportioned to the States respectively.

The records of the office of the First Comptroller show that each of the States composing the "insurrectionary districts" was charged with the amount of the direct tax apportioned to it, and that the same amount was charged to the direct tax Commissioners for that State. Thus the anomaly is presented of two persons, as it were, being charged with the same debt. It is considered, however, that the two accounts are to be taken together also upon their credit sides. When the amounts are once fixed which are to constitute the entries in the account against the State it is believed that the ordinary principles of bookkeeping in the department will indicate how these entries are to be made.

If it be assumed that the decision charging each of the States with its proportion of the

tax was correct, then the account of the Commissioners for that State, when correctly adjusted, will form the proper basis for the credit to be given in the account with the State.

The question is then presented what item or items fixed by the Commissioners' account is or are proper credits to the State?

This Commission is divided upon this question. It is contended by one member, who submits his views in a separate report, that each State is entitled to credit upon the quota of the tax apportioned to it not only for the amount of the tax collected, but also for the sums collected as penalty, interest, costs, and excess. Two of the members are of opinion that each State is entitled to credit, by transfer from the correctly adjusted account of the Commissioners for the State, for the amount which is shown to have been collected as tax and for that only, this amount to be deducted from the tax apportioned to the State in order to determine the balance due; and they submit that the proper credit upon tax charged is tax collected, and that the items of penalty, interest, and costs, are expenses incurred by reason of default in the payment of the tax within the time prescribed by law, and are in addition to the tax imposed by the law.

In the accounts adjusted with the Commissioners for several of the States, more than three Commissioners have been charged. Under the law only three Commissioners could lawfully be acting at one time, and when the accounts were adjusted they should have been divided at the points of time when the Boards of Commissioners were changed, either by death, resignation, or removal of one or more members. It seems that in these cases the Commissioners, upon the retirement of one of their number and the appointment of his successor, did not make a pause in their collections and accounts so as to show where one Board of Commissioners ceased and the other began operations, and therefore the accounts have been stated with more than three Commissioners. This fact may stand in the way of determining the legal liability of the respective Commissioners for balances found due to the United States, but it is recommended that the propriety of instituting suits upon the bonds of the Commissioners to recover the balances due be considered.

Very respectfully,

J. H. LICHLITER.  
V. N. STILES.

I concur in the above report, except in so far as the same may conflict with my separate opinion herewith filed.

Very respectfully,

F. WERBER, JR.

Hon. Daniel Manning, Secretary of the Treasury.

TREASURY DEPARTMENT, WASHINGTON, D. C.,  
February 20, 1886.

SIR: I am unable to concur in the method of adjustment of the uncollected tax in the insurrectionary districts as set forth by the majority of the Commission heretofore appointed by your letter of December 10, 1885, "to make investigation into the direct tax accounts," etc.; and I respectfully suggest as a substitute therefor the following proposition:

The tax uncollected and due by the State is the quota as originally apportioned under Section 8 of Act of August 5, 1861, reduced by the amount of all collections in such State of tax, penalty, interest, costs, and excess, whether collected before sale and shown by the adjustment of the accounts with the Commissioners, or collected by sale and shown by the records in this Department.

It must be observed that in the majority report the balance due by each of the States lately in insurrection has been ascertained by deducting from the original quota apportioned to such State the amount of tax alone collected therein, without considering in any manner the collection of penalty, interests, costs, or excesses, and that all the tables accompanying that report are made up on that basis.

It is respectfully suggested that the province of this Commission is to examine into the matters connected with the direct tax, not as statesmen to suggest what might be best, nor as judges to expound the various laws on this subject, but rather as accountants of the Executive Department, whose duty it is to apply to the mathematical problems submitted the law as it has been held to be by those whose duty it is to construe it, and with all the limitations and restrictions which may legitimately follow such rulings.

The various decisions of the honorable First Comptroller upon the laws applicable hereto furnish a guide which cannot be ignored by the accountants of this Department.

The Hon. R. W. Tayler, then First Comptroller of the Treasury, on May 29, 1868, held that the direct tax was a debt due by the several States as bodies corporate, and accordingly charged them therewith; the records of this Department all announce the direct tax as a State's debt; the Secretary of the Treasury tacitly acknowledges it when in his instructions he directs that this Commission "examine into \* \* \* the accounts \* \* \* between the United States and all the States and Territories concerned."

The direct tax is, therefore, so far as the investigation of this commission can go, a debt due by the several States as corporations.

It must be acknowledged that this construction of the law appears not to conform to the intention of the acts upon this subject; but the decision fixing it as a State debt has such force in the Treasury Department as to preclude any other view of the direct tax

than that of a debt due by the State; and accepting this doctrine the conclusions herein set forth are believed to be those which logically follow.

If the State owes the debt, the land owner does not owe it. He can then be held responsible directly to the General Government for no part of it. His obligation is to his State, and he can be reached in no other manner than indirectly through his State, and under State laws.

The rules of construction require that all laws imposing fines, forfeitures, or penalties shall be construed strictly and most strongly against the power making it. There is in the Act in question a specific amount set forth which shall constitute the debt of each State; but there is no further provision in the law for penalty, cost, interest, or excess against the State. None can then be exacted or required, nor can "the State be substituted for the land owner," nor "subjected to any penalties in terms imposed on him for failure to pay" a debt which is not his. The provisions of the Act authorizing penalty, interest, cost, and forfeiture against the individual land owner must be regarded rather as an attempt upon the part of the Government to collect this tax expeditiously, and with the least expense possible, collecting more than his proportion from one and less than his from another land owner, leaving him who has contributed too much to his recourse upon his State or upon his neighboring land owner who has contributed too little.

The position taken that the charges against the several States, as entered upon the books of this Department, indicate only that so much money is to come from the State, in a geographical or territorial sense, cannot be maintained in the Treasury Department, because (1) the very fact of charging the State indicates that the State owes the debt, which it can do only in its corporate capacity; and (2) this very question has been decided, first by Comptroller Tayler, and afterwards reviewed by Comptroller William Lawrence in the Georgia case. (See 4 Law. Dec., p. 354, *et seq.*)

The Commission is now estopped from treating the direct tax in any other light than as a debt due from the State in its corporate capacity; and the amount of the State's obligation is adjudicated under the decision of the honorable First Comptroller of May 29, 1868, as the quota alone, as set forth in Section 8, Act of August 5, 1861.

With what shall the State be now credited?

The Government has received no payment directly from the State; but whatever sum has been received has been paid by the land owners of such State, through the Commissioners, or has been realized from the sale of lands belonging, not to the State, but to the citizen. But the citizen owed no debt.

Two views may be here presented. First, that the United States has *compelled* the land owner to pay a debt which he does not owe. The Government would then have acted in tort and could apply no part of the proceeds to the liquidation of the State's debt.

The other, and perhaps the proper view, is that the land owner has simply *contributed* from his individual means to pay, *pro tanto*, the State's debt.

The sum which he has paid, or which has been derived from the sale of property, may be considered as composed of two parts:

(1) That portion which the United States recognizes as erroneously exacted of him by the Tax Commissioners, and including the surplus over tax, penalties, interest, costs, etc., in cases of sales, and which the Government has refunded, or is now ready to repay to the land owners from whom it was received; and,

(2) That part, including tax, penalty, interest, cost, etc., which the Government does not propose to refund to him, but for the repayment of which he must look to his State, the debtor for whom he made the payment.

All sums of this second class, which the United States has received, must be applied to the extinguishment, *pro tanto*, of the State's debt. To what other account can it be applied? What right has the United States to it except for that purpose? It becomes now simply so much money had and received by the United States for the use of the State, and must be applied as a whole to the credit of the State, against which there are penalties, interest, or cost, regardless of whether it was denominated as against the land owner as a tax, penalty, interest, cost, excess, or by any name whatsoever.

It has been suggested, first, that the State may be regarded as having committed the payment of this tax to its citizens as its agents; and second, that the citizens are only the sureties for the payment of this debt. In either of these cases the debtor, the State, must have credit on its account, and it owes nothing but the quota, for all that has been paid by its agents or its sureties; and as between creditor and surety, it must be remembered that the creditor has the right to require all or any portion of the debt from any surety, leaving him to his remedies against his principal debtor or his co-sureties for equity and equality.

Again, it has been suggested to charge the State with all the items which are properly charged against the Commissioners, and the result reached by the majority of this Commission would be obtained. Of course, if the same account is stated with two different persons in the same language, in the same figures, and in the same manner, the same result must follow.

But this involves the idea that the liability of the two persons are identical.

The Commissioners have been properly charged with the moneys they received from all sources. How can the fact of their having sold a tract of land, or a lot of office furniture, the property of the United States, increase the State's liability? Yet this would be the result were this plan of bookkeeping adopted.

The State can be charged with the quota apportioned under the Act alone.

The provisions of the Act of June 7, 1862, in so far as they prescribe different sums for

penalties, interest, and cost for a portion of the United States from those prescribed under the previous Act for the remainder of the States, would, under any other views than the plan herein suggested, be rendered unconstitutional, null, and void under Sections 2 and 8, Article 1, Constitution. Because, should one State assume and pay the tax, as provided under the law, and another State not so assume and pay it, should penalties, interest, costs, and excess be exacted of the latter and not of the former State, then that proportion which the Constitution requires between the States' taxes would no longer exist, and the provisions of the Constitution would be defeated.

The Government did not expect to recover the full sum named in the Act. This is evident, when it is remembered that \$20,000,000 was levied and apportioned to the several States and Territories, *out of, and not in addition to*, which should come the costs.

Of the original sum, the United States expected to recover no more than eighty-five per cent, or \$17,000,000 net; yet, were costs, penalties, interest, and forfeitures, as provided, against the citizen allowed to increase the quota of the State, a sum greatly exceeding even \$30,000,000 might be required to pay a debt of only \$20,000,000.

No figures are herein set forth showing the amounts of the several items for which it is suggested that the States have further credit, for the reason that no such investigation has been undertaken by the Commission; and any figures which might be herein suggested, being *ex parte*, might not be accepted as correct.

Should this method of adjustment be accepted, however, the records in this Department furnish ready access to all such sums as may be required for this purpose.

It appears that, in perhaps all the States in which the direct tax was collected through Commissioners, very great irregularities have been committed in assessing, collecting, and in accounting for the proceeds of this direct tax by the Direct Tax Commissioners.

The majority of this Commission has chosen not to make a report upon this matter. I desire, however, to call to the attention of the Department the existence of these irregularities; and, in order to do so, I will use the records of the Commissioners of South Carolina, not because any greater irregularities are thought to exist there than elsewhere, but because that record is, perhaps, more complete than any other, and because I am more familiar with the laws of taxation of that State than with those of the other States.

The Direct Tax Commissioners of South Carolina, in their records, admit having received substantially the information which was necessary in order to fix the tax correctly under the law. (See report of the Commissioners, dated January 1, 1863, as recorded in Book of Records, at pages 50, *et seq.*)

It appears from the laws of this State, as well as from the annual report of the Comptroller-General of South Carolina for 1860, that at the time of the collection of the direct tax there was in force here a system of taxation brought down from the eighteenth century, as slightly modified under the Act of 1815, whereby all lands were divided into ten different classes, and assessed for taxation at sums fixed for each class, but varying with the different classes at from twenty cents to \$26 per acre.

These classes were arranged with reference to the character of the timber growing upon the lands half a century prior to the collection of the direct tax, and the assessed value thereupon represented neither the actual cash value nor the relative values of the lands of this State at that time.

For taxation the State was divided under State laws into the "upper division" and the "lower division," in the latter of which alone was the direct tax attempted to be levied and collected.

In this lower division there were, under State assessment, lands in each of the ten classes, and assessed at each of the ten different valuations, yet the Direct Tax Commissioners, in assessing the lands here, adopted only *two* of the ten valuations it seems, viz.: 20 cents on one class and \$4 on all other classes of lands, a few lots only being assessed at the former valuation, while by far the greater portion of the lands were assessed at \$4 per acre. Nor was regard had apparently to the improvements upon or the proximity to or remoteness from markets, or the actual cash value of the lands.

The Commissioners fixed the entire taxable property of the State at \$30,833,322 10 $\frac{1}{2}$ , and still imposed upon the several parishes and districts constituting the "lower division" of the State for taxation an aggregate assessed valuation of \$33,750,000, or nearly \$3,000,000 more than the entire estimate for the State, leaving unassessed the upper division, which, under State law, constituted more than one fourth the taxable value of lands in the State, and about three fourths the State's area.

The Commissioners imposed upon farming lands—all property not in towns, etc.—a tax of "\$2 ad valorem for each \$100 valuation," and "upon the city, town, village, and borough lots the sum of 80 cents ad valorem on each \$100 of valuation." This has very recently been the subject of judicial inquiry before the Court of Claims, where it has been held that the assessment should have been the same for all classes of property, and that any assessment in excess of such a levy is erroneous, and the amounts collected thereunder in excess of the proper sums should be refunded to the land owners paying the same. It will be readily seen that inasmuch as the item "tax uncollected" has been deducted from the amount of tax collected from the land owner, all amounts erroneously collected and which must be refunded under this or similar decisions, will affect the liability of the State to whatever extent the items applicable to the payment of the State's debt may be refunded.

The report of the Comptroller General of South Carolina for 1860, adding thereto the assessment for Union County for the next fiscal year, which is substantially correct, as no return for this county seems to have been received or incorporated in the first of the said

reports, shows as taxable real estate in the entire State \$41,924,074, of which \$30,090,507 was in the "lower division." Then if \$41,924,074 should pay \$363,570 67, the quota of the State, \$30,090,507 should pay \$260,948 53. But upon this lower division the Commissioners levied \$348,283 34, or \$87,334 81 more than its proportion. Should the rate of taxation have been uniform, each land owner has been compelled to pay 33.8 per cent more than could be imposed under the law.

The same figures will show that the assessment for this State should have been 86 cents (about) on each \$100 valuation. Town property has then paid 6 cents too little, and country property \$1 14 too much on each \$100 valuation.

It is probable that there will yet be presented numerous claims for refunding amounts erroneously collected, both here and in other States. Each sum refunded, and which was heretofore credited to the State on account of tax will necessarily affect the amount due from the State. And hence the necessity of the observations upon this point.

Respectfully submitted.

F. WERBER, JR.

Hon. Daniel Manning, Secretary of the Treasury.

APPENDIX SHOWING ACCOUNTS AS ADJUSTED AND AS RECOMMENDED  
BY THIS COMMISSION.

	Dr.	Cr.
State of Alabama—		
To direct tax, per report No. 55,622.....	\$529,313 33	
State of Arkansas—		
To direct tax, per report No. 55,627.....	\$261,886 00	
State of California—		
To direct tax, as per report No. 55,633.....	\$254,538 67	
To cash, per report No. 10,813.....		\$247,445 41
By cash, per report No. 39,283.....		495 72
By amount credited under Deficiency Act of July 7, 1884.....		38,180 80
To cash paid the Governor.....	31,583 26	
	\$286,121 93	\$286,121 93
Territory of Colorado—		
To direct tax, as per report No. 55,624.....	\$22,905 33	
By cash deposited, report No. 34,699.....		\$1,516 89
By balance due United States.....		21,388 44
	\$22,905 33	\$22,905 33
To balance.....	21,388 44	
State of Connecticut—		
To direct tax, as per report No. 55,488.....	\$308,214 00	
By cash deposited, as per report No. 10,725.....		\$261,981 90
By fifteen per cent commissions.....		46,232 10
	\$308,214 00	\$308,214 00
Territory of Dakota—		
To direct tax, as per report No. 55,625.....	\$3,241 33	
State of Delaware—		
To direct tax, as per report No. 55,490.....	\$74,683 33	
By cash deposited, as per report No. 10,861.....		\$68,136 35
By cash deposited, as per report No. 34,695.....		2,635 67
By amount released under compromise.....		3,911 31
	\$74,683 33	74,683 33
District of Columbia—		
To direct tax, as per report No. 55,636.....	\$49,437 33	
By cash deposited, as per report No. 10,799.....		\$49,437 33
	\$49,437 33	\$49,437 33
State of Florida—		
To direct tax, as per report No. 55,628.....	\$77,522 67	
State of Georgia—		
To direct tax, as per report No. 55,448.....	\$584,367 33	
State of Illinois—		
To direct tax, as per report No. 55,567.....	\$1,146,551 33	
By cash deposited, as per report No. 10,742.....		\$974,568 63
By fifteen per cent commissions.....		171,982 70
	\$1,146,551 33	\$1,146,551 33

Appendix showing Accounts as Adjusted, etc.—Continued.

	Dr.	Cr.
State of Indiana—		
To direct tax, as per report No. 55,556.....	\$904,875 33	
By cash deposited, as per report No. 11,006.....		\$769,144 03
By fifteen per cent commissions.....		135,731 30
	\$904,875 33	\$904,875 33
State of Iowa—		
To direct tax, as per report No. 55,629.....	\$452,088 00	
By cash deposited, as per report No. 10,754.....		\$384,274 80
By fifteen per cent commissions.....		67,813 20
	\$452,088 00	\$452,088 00
State of Kansas—		
To direct tax, as per report No. 55,626.....	\$71,743 33	
By cash deposited, as per report No. 10,864.....		\$9,360 82
By cash, per report No. 32,388.....		62,382 51
By reimbursement of 15 per cent commissions under Act of August 5, 1882.....		10,761 50
To cash paid State.....	10,761 50	
	\$82,504 83	\$82,504 83
State of Kentucky—		
To direct tax, as per report No. 55,562.....	\$713,695 33	
By cash deposited, as per report No. 10,798.....		\$606,641 03
By 15 per cent commissions.....		107,054 30
	\$713,695 33	\$713,695 33
State of Louisiana—		
To direct tax, as per report No. 55,565.....	\$385,886 67	
State of Maine—		
To direct tax, as per report No. 55,484.....	\$420,826 00	
By cash deposited, as per report No. 10,710.....		\$357,702 10
By 15 per cent commissions.....		63,123 90
	\$420,826 00	\$420,826 00
State of Maryland—		
To direct tax, as per report No. 55,450.....	\$436,823 33	
By cash deposited, as per report No. 10,741.....		\$371,299 83
By 15 per cent commissions.....		65,523 50
	\$436,823 33	\$436,823 33
State of Massachusetts—		
To direct tax, as per report No. 55,442.....	\$824,581 33	
By cash deposited, as per report No. 10,723.....		\$700,894 14
By 15 per cent commissions.....		123,687 19
	\$824,581 33	\$824,581 33
State of Michigan—		
To direct tax, as per report No. 55,634.....	\$501,763 33	
By cash deposited, as per report No. 10,772.....		\$426,498 83
By 15 per cent commissions.....		75,264 50
	\$501,763 33	\$501,763 33
State of Minnesota—		
To direct tax, as per report No. 55,611.....	\$108,524 00	
By cash deposited, as per report No. 11,013.....		\$92,245 40
By 15 per cent commissions.....		16,278 60
	\$108,524 00	\$108,524 00
State of Mississippi—		
To direct tax, as per report No. 55,630.....	\$413,084 67	
State of Missouri—		
To direct tax, as per report No. 55,635.....	\$761,127 33	
By cash deposited, as per report No. 10,771.....		\$646,958 23
By 15 per cent commissions.....		114,169 10
	\$761,127 33	\$761,127 33

## Appendix showing Accounts as Adjusted, etc.—Continued.

	Dr.	Cr.
<b>Territory of Nebraska—</b>		
To direct tax, as per report No. 55,609.....	\$19,312 00	
By cash deposited.....		\$4,281 60
By amount credited under Act of August 7, 1882.....		15,030 40
	\$19,312 00	\$19,312 00
<b>Territory of Nevada—</b>		
To direct tax, as per report No. 55,623.....	\$4,592 67	
By cash deposited, as per report No. 10,773.....		\$4,592 33
By cash, as per report No. 34,701.....		34
By refundment of 15 per cent under Act of July 7, 1884.....		688 90
To cash paid State.....	688 90	
	\$5,281 57	\$5,281 57
<b>State of New Hampshire—</b>		
To direct tax, as per report No. 55,485.....	\$218,406 67	
By cash deposited, as per report No. 10,711.....		\$185,645 67
By 15 per cent commissions.....		32,761 00
	\$218,406 67	\$218,406 67
<b>State of New Jersey—</b>		
To direct tax, as per report No. 55,491.....	\$450,134 00	
By cash deposited.....		*\$382,614 83
By 15 per cent commissions.....		†67,519 17
	\$450,134 00	\$450,134 00
<b>Territory of New Mexico—</b>		
To direct tax, as per report No. 55,612.....	\$62,648 00	
By amount credited under Act of July 1, 1862.....		\$62,648 00
	\$62,648 00	\$62,648 00
<b>State of New York—</b>		
To direct tax, as per report No. 55,489.....	\$2,603,918 67	
By cash deposited, as per report No. 10,814.....		\$2,132,100 61
By commissions.....		319,315 09
By cash deposited, as per report No. 18,225.....		81,230 25
By balance of commissions.....		70,772 72
	\$2,603,918 67	\$2,603,918 67
<b>State of North Carolina—</b>		
To direct tax, as per report No. 55,446.....	\$576,194 67	
<b>State of Ohio—</b>		
To direct tax, as per report No. 55,563.....	\$1,567,194 67	
By cash deposited, as per report No. 10,770.....		\$1,332,025 93
By 15 per cent commissions.....		235,063 40
	\$1,567,194 67	\$1,567,194 67
<b>State of Oregon—</b>		
To direct tax, as per report No. 55,610.....	\$35,140 67	
By cash deposited, as per report No. 34,697.....		\$1,891 60
By cash deposited, as per report No. 39,284.....		33,249 07
By amount credited by Act of July 7, 1884.....		5,271 10
To cash paid State.....	\$5,271 10	
	\$40,411 77	\$40,411 77
<b>State of Pennsylvania—</b>		
To direct tax, as per report No. 55,487.....	\$1,946,719 33	
By cash deposited, as per report No. 10,740.....		\$1,654,711 43
By commissions.....		292,007 90
	\$1,946,719 33	\$1,946,719 33
<b>State of Rhode Island—</b>		
To direct tax, as per report No. 55,451.....	\$116,963 67	
By cash deposited, as per report No. 10,724.....		\$99,419 11
By 15 per cent commissions.....		17,544 56
	\$116,963 67	\$116,963 67

\* Deposit, 93 cents too much.

† Commissions, 93 cents too small.

## Appendix showing Accounts as Adjusted, etc.—Continued.

	Dr.	Cr.
<b>State of South Carolina—</b>		
To direct tax, as per report No. 55,447.....	\$363,570 67	
<b>State of Tennessee—</b>		
To direct tax, as per report No. 55,564.....	\$669,498 00	
<b>State of Texas—</b>		
To direct tax, as per report No. 55,632.....	\$355,106 67	
<b>Territory of Utah—</b>		
To direct tax, as per report No. 55,613.....	\$26,982 00	
<b>State of Vermont—</b>		
To direct tax, as per report No. 55,453.....	\$211,068 00	
By cash deposited, as per report No. 10,712.....		\$179,407 80
By 15 per cent commissions.....		31,660 20
	\$211,068 00	\$211,068 00
<b>State of Virginia—</b>		
To direct tax, as per report No. 55,449.....	\$937,550 67	
By amount apportioned to West Virginia.....		\$208,479 65
Balance due.....		729,071 02
	\$937,550 67	\$937,550 67
To balance.....	729,071 02	
<b>Washington Territory—</b>		
To direct tax, as per report No. 55,614.....	\$7,755 33	
By cash deposited.....		\$4,268 16
By balance.....		3,487 17
	\$7,755 33	\$7,755 33
To balance.....	3,487 17	
<b>State of West Virginia—</b>		
To direct tax, as per report No. 10,872.....	\$208,479 65	
By cash deposited, as per report No. 10,872.....		\$153,978 75
By 15 per cent commissions.....		27,172 72
By credit under letter of Secretary of Treasury.....		27,328 18
	\$208,479 65	\$208,479 65
<b>State of Wisconsin—</b>		
To direct tax, as per report No. 55,631.....	\$519,688 67	
By cash deposited, as per report No. 10,817.....		\$262,309 55
By 15 per cent commissions.....		39,346 43
By balance.....		218,032 69
	\$519,688 67	\$519,688 67
To balance.....	\$218,032 69	
By cash deposited, as per report No. 34,698.....		\$166,887 13
By balance.....		51,145 56
	\$218,032 69	\$218,032 69
To balance.....	51,145 56	



*Hulings Cowperthwait and Enoch H. Vance, as Direct Tax Commissioners for the State of Arkansas.*

	Dr.	Cr.
(Report 6.)		
To amount of direct tax .....	\$261,886 00	
To amount of penalties collected .....	3,848 35	
To amount of interest collected .....	2,006 87	
To amount of costs collected .....	470 06	
To amount of excess collected .....	1,571 47	
To proceeds sales of land .....	56,865 00	
By cash deposited .....		\$186,736 44
By taxes uncollected .....		107,686 72
By taxes refunded .....		14 93
(Report 25.)		
By rent, salaries, etc., paid .....		15,482 90
By balance due United States .....		16,726 76
Total .....	\$326,647 75	\$326,647 75
To balance .....	16,726 76	

*Statement of the account with the Commissioners for the State of Arkansas, as recommended by this Commission.*

	Dr.	Cr.
To direct tax .....	\$261,886 00	
To penalties collected .....	\$3,848 35	
Less amount charged in redemptions .....	27 67	
	3,820 68	
To interest collected .....	\$2,006 87	
Less amount charged in redemptions .....	39 14	
	1,967 73	
To costs collected .....	\$470 06	
Less amount charged in redemptions .....	83 90	
	386 16	
To excess collected .....	1,571 47	
To proceeds sales of land to individuals .....	\$56,865 00	
Less tax on sales of land to individuals .....	566 86	
	56,298 14	
To proceeds of redemption .....	215 67	
By cash deposited .....		\$186,736 44
By tax uncollected .....		107,184 82
By tax refunded .....		14 93
By rent, salaries, etc., paid .....		15,482 90
By balance due United States .....		16,726 76
Total .....	\$326,145 85	\$326,145 85
To balance due United States .....	*16,726 76	

\*This commission recommend the allowance of the further sum of \$8,842 43, which, if allowed, would reduce the balance due the United States to \$7,884 28.

*Harrison Reed, L. D. Stickney, John S. Sammis, William Alsop, Austin Smith, Daniel Richards, Buckingham Smith, and John Friend, as Direct Tax Commissioners for the State of Florida.*

	Dr.	Cr.
(Report 27.)		
To amount of direct tax .....	\$77,522 67	
To amount of penalties collected .....	1,994 60	
To proceeds sales of land .....	63,353 78	
To proceeds redemptions .....	3,237 77	
To tax, penalty, interest, and costs (not divisible) .....	1,752 52	
To amount received for rent .....	1,530 38	
To amount received of Florida Railroad Company .....	4,126 00	
To amount received sales of office furniture .....	320 00	
To amount received tax on salaries .....	98 03	
By cash deposited .....		\$44,434 81
By miscellaneous expenses .....		16,419 76
By refunded to purchasers after redemption .....		1,399 45
By amount returned to purchasers after first sale .....		8,903 04
By amount sales not perfected .....		726 70
By amount deposited on account Florida Railroad Company .....		4,126 00
By amount fees paid Commissioners .....		262 00
By amount taxes uncollected .....		72,756 26
By balance due United States .....		4,907 73
Total .....	\$153,935 75	\$153,935 75
To balance .....	4,907 73	

*Statement of the account with the Commissioners for the State of Florida, as recommended by this Commission.*

	Dr.	Cr.
To direct tax .....	\$77,522 67	
To penalties collected .....	1,994 60	
To proceeds sales .....	\$63,353 78	
To less tax on sales .....	1,496 99	
	61,856 79	
To proceeds redemptions .....	3,237 77	
To tax, penalties, and interest collected, not divisible .....	1,752 52	
To rents .....	1,530 38	
To amount from Florida Railroad Company .....	4,126 00	
To sales furniture .....	320 00	
To tax on salaries .....	98 03	
By cash deposited .....		\$44,434 81
By miscellaneous expenses .....		16,419 76
By amount refunded on redemption .....		1,399 45
By amount refunded after first sale .....		8,903 04
By sales not perfected .....		726 70
By deposit on account Florida Railroad Company .....		4,126 00
By fees paid to Commissioners .....		262 00
By tax uncollected .....		72,762 37
By tax on lands bid in for United States .....		142 47
By balance due United States .....		3,262 16
Total .....	\$152,438 76	\$152,438 76
To balance due United States .....	3,262 16	

*T. P. Robb, Samuel A. Pancoast, and John C. Bates, as Direct Tax Commissioners for the State of Georgia.*

	Dr.	Cr.
(Report 5.)		
To amount of district tax .....	\$584,367 34	
To excess of collections .....	649 72	
By cash deposited .....		\$71,407 75
By cash paid for salaries .....		6,265 35
By cash paid, stationery, postage, etc. ....		260 04
By advertising and printing .....		362 60
By rent of office .....		1,404 59
By traveling expenses .....		378 80
By miscellaneous expenses .....		1,163 68
By amount refunded as tax improperly collected ..		46 17
By taxes uncollected .....		501,939 86
(Report 23.)		
By miscellaneous items .....		1,443 56
By balance .....		344 66
Total .....	\$585,017 06	\$585,017 06
To balance .....	344 66	

*E. M. Randall, George W. Ames, and M. F. Bonzano, as Direct Tax Commissioners for the State of Louisiana.*

	Dr.	Cr.
(Report 10.)		
To direct tax .....	\$385,886 67	
By cash deposited .....		\$88,203 72
By salaries paid .....		1,429 93
By stationery and postage .....		416 25
By advertising and printing .....		2,250 00
By miscellaneous expenses .....		20 75
By taxes transferred to successors .....		280,452 65
By cash transferred to successors .....		13,113 37
Total .....	\$385,886 67	\$385,886 67

*E. M. Randall, George W. Ames, and D. Urban, as Direct Tax Commissioners for the State of Louisiana.*

	Dr.	Cr.
(Report 11.)		
To taxes received from predecessor .....	\$280,452 65	
To cash received from predecessors .....	13,113 37	
By cash deposited .....		\$180,308 92
By salaries paid .....		10,498 23
By stationery and postage .....		471 50
By advertising and printing .....		57 50
By rent of office .....		730 00
By traveling expenses .....		1,234 80
By miscellaneous expenses .....		467 92
By taxes uncollected .....		71,385 83
(Report 26.)		
By miscellaneous credits .....		14,385 74
By balance .....		14,025 58
Total .....	\$293,566 02	\$293,566 02
To balance due United States .....	14,025 58	

*Albert Alderson, Pennock Huey, and George A. Sykes, as Direct Tax Commissioners for the State of Mississippi.*

	Dr.	Cr.
(Report 8.)		
To direct tax .....	\$413,084 67	
To interest collected .....	416 45	
To proceeds sales furniture .....	19 60	
By cash deposited .....		\$60,232 28
By salaries paid .....		2,636 71
By stationery and postage .....		265 11
By advertising and printing .....		15 00
By taxes uncollected .....		343,500 12
By miscellaneous credits .....		83 66
(Report 18.)		
By salaries paid .....		6,359 66
(Report 22.)		
By cash deposited .....		30 85
By miscellaneous expenses .....		397 33
Total .....	\$413,520 72	\$413,520 72

*John R. French, Hiram Potter, Jr., and Charles C. Sholes, as Direct Tax Commissioners for the State of North Carolina.*

	Dr.	Cr.
(Report 3.)		
To direct tax .....	\$576,194 67	
By taxes transferred to successors .....		\$573,747 58
By cash to successors .....		2,447 09
Total .....	\$576,194 67	\$576,194 67

*John R. French, Hiram Potter, Jr., and E. H. Sears, as Direct Tax Commissioners for the State of North Carolina.*

	Dr.	Cr.
(Report 4.)		
To cash from predecessors .....	\$2,447 09	
To taxes from predecessors .....	573,747 58	
To penalties collected .....	26,217 78	
To interest collected .....	589 51	
To excess collected .....	383 82	
By cash deposited .....		\$386,194 45
By salaries paid .....		12,857 65
By stationery and postage .....		344 56
By advertising and printing .....		285 40
By rent of office .....		1,019 88
By traveling expenses .....		517 85
By miscellaneous expenses .....		916 48
By taxes uncollected .....		198,742 06
(Report 19.)		
By salaries paid .....		1,323 63
By excess of stubs over land books .....		383 82
By Silver Hill Mining Company's tax .....		800 00
Total .....	\$603,385 78	\$603,385 78

W. H. Brisbane, W. E. Wording, W. Drummond, A. D. Smith, D. N. Cooley, and J. D. Martin,  
as Direct Tax Commissioners for the State of South Carolina.

	Dr.	Cr.
(Report 12.)		
To direct tax	\$363,570 67	
To penalties collected	132 76	
To interest collected	27,284 99	
To proceeds of sales of land	28,232 29	
To proceeds redemption	954 82	
To sales to the army and navy	137,018 68	
To sales to heads of families	31,833 46	
To special rents on lands	21,845 42	
To rents on lands	21,899 70	
To school fund under President's instructions	26,797 12	
To school fund under Act July 16, 1866	56,515 35	
To sales of maps	24 00	
To certificate fees	4,465 50	
To rents on certificates	2,763 90	
To forfeitures	50 00	
To sales to loyal citizens	41,768 00	
To interest on deferred payments	982 50	
To Sherman warrants sales	54 75	
To costs advertising lands not paid for	50 52	
To costs exacted before sale	52 98	
To miscellaneous collections	365 15	
(Report 16.)		
To error in report 12	2,514 71	
(Report 12.)		
By cash deposited		\$471,378 59
By taxes uncollected		152,781 35
By cash transferred to Bureau of R. F. and A. Lands		55,040 12
By cash paid William R. Cloutman		3,444 45
By cash disbursed on account of schools		22,396 16
By cash disbursed on account of fees, etc.		55,814 12
By certificate fees		4,465 50
(Report 16.)		
By cash transferred to William R. Cloutman		2,514 71
By cash disbursed		1,342 27
Total	\$769,177 27	\$769,177 27

Statement of the Account with the Commissioners for the State of South Carolina as recommended by this Commission.

	Dr.	Cr.
To direct tax	\$363,570 67	
To penalties collected	132 76	
To interest collected	27,284 99	
To sales of land	\$28,232 29	
Less tax on land	1,973 29	
	26,259 00	
To proceeds of redemption	954 82	
To sales to army and navy	137,018 68	
To sales to heads of families	31,833 46	
To special rents	21,845 42	
To rents on land	21,899 70	
To school fund, President's instructions	26,797 12	
To school fund, Act July 16, 1866	56,515 35	
To sales of maps	24 00	
To certificate fees	4,465 50	
To rents on certificates	2,763 90	
To forfeitures	50 00	
To sales to loyal citizens	41,768 00	
To interest on deferred payments	982 50	
To Sherman warrants sales	54 75	
To costs, advertising land, etc.	50 52	
To costs exacted before sale	52 98	
To miscellaneous collections	365 15	
To balance	248 00	
By cash deposited		\$468,863 88
By tax uncollected		141,174 31
By tax on lands bid in for United States		9,881 75
By cash to Bureau Refugees, Freedmen, and abandoned lands.		55,040 12
By cash to William R. Cloutman		5,959 16
By cash disbursed, account schools		22,396 16
By cash disbursed, account fees, etc.		57,156 39
By cash disbursed, account certificate fees		4,465 50
Total	\$764,937 27	\$764,937 27
By balance		248 00

William R. Cloutman, as successor to Direct Tax Commissioners, for South Carolina.

	Dr.	Cr.
(Report 15.)		
To cash received from predecessor.....	\$3,444 45	
To cash from sales of land.....	1,542 00	
To cash from redemptions.....	5,279 80	
To cash from miscellaneous sales.....	604 30	
To cash from rents of school farms.....	2,969 10	
To cash from special rents.....	18,952 39	
To cash from other rents.....	8,002 16	
To cash from deferred payments.....	7,442 08	
(Report 17.)		
To cash from predecessors.....	2,514 71	
(Report 29.)		
To cash from collections, W. E. Wording.....	2,329 06	
To cash from redemptions.....	123 85	
To cash from miscellaneous collections.....	52 25	
To amount due collector and suspended.....	255 18	
(Report 15.)		
By cash deposited.....		\$18,898 52
By cash deposited, account school fund.....		5,071 27
By salaries paid.....		215 90
By stationery, postage, etc.....		75 13
By advertising, printing, etc.....		63 00
By traveling expenses.....		291 45
By miscellaneous expenses.....		1,183 16
(Report 29.)		
By cash deposited.....		9,260 18
By overcharge sales, H. F.....		778 25
By overcharge miscellaneous sales.....		436 55
By overcharge rents school farms.....		1,121 40
By overcharge special rents.....		7,312 27
By overcharge other rents.....		4,432 70
By overcharge deferred payments.....		127 50
By rents returned to owners.....		192 61
By amount refunded on redemption.....		4,051 35
Total.....	\$53,511 33	\$53,511 33
By amount due collector and suspended.....		255 18

A. J. Ransier, as successor of the Direct Tax Commissioners for the State of South Carolina.

	Dr.	Cr.
(Report 28.)		
To proceeds of redemption.....	\$1,735 03	
To proceeds of deferred payments.....	824 01	
To proceeds of rents.....	369 25	
To proceeds of miscellaneous sales.....	6 00	
By cash deposited.....		\$2,744 24
By amount refunded on redemption.....		155 05
By balance due United States.....		35 00
Totals.....	\$2,934 29	\$2,934 29
To balance due United States.....	35 00	

Delano T. Smith, Elisha P. Ferry, Absalom A. Kyle, John B. Rogers, and Edward P. Cone, as Direct Tax Commissioners for the State of Tennessee.

	Dr.	Cr.
(Report 9.)		
To direct tax.....	\$669,498 00	
To penalties collected.....	12,382 94	
To interest collected.....	909 54	
To costs collected.....	967 36	
To excess collected.....	7 59	
To proceeds sale of land.....	123,097 00	
To proceeds redemptions.....	8,732 50	
To collections Adams Express Company.....	27 50	
To proceeds sale of furniture.....	154 16	
(Report 14.)		
To error in Report 13.....	5 00	
(Report 9.)		
By cash deposited.....		\$467,700 00
By salaries paid.....		5,463 25
By stationery, postage, etc.....		240 25
By advertising, printing, etc.....		2,387 50
By rent of office.....		250 00
By miscellaneous expenses.....		446 60
By taxes uncollected.....		287,963 43
(Report 13.)		
By amount refunded on redemption.....		31,090 61
(Report 14.)		
By amount refunded on redemption.....		3,319 85
By cash deposited.....		22 06
By miscellaneous credits.....		16,898 04
Totals.....	\$815,781 59	\$815,781 59

*Statement of the Account with the Commissioners for the State of Tennessee, as recommended by this Commission.*

	Dr.	Cr.
To direct tax .....	\$669,498 00	
To penalties collected .....	12,382 94	
To interest collected .....	909 54	
To costs collected .....	967 36	
To excess collected .....	7 59	
To sales of land .....	\$123,097 00	
Less tax on land .....	8,728 93	
	114,368 07	
To proceeds of redemption .....	8,732 50	
To collections of Adams Express Company .....	27 50	
To sale of furniture .....	154 16	
By cash deposited .....		\$467,722 06
By salaries paid .....		5,463 25
By stationery, postage, etc. ....		240 25
By advertising, printing, etc. ....		2,387 50
By rent of office .....		250 00
By miscellaneous expenses .....		17,344 64
By amount refunded on redemption .....		34,405 46
By tax uncollected .....		277,505 77
By tax on property bid in for United States .....		1,728 73
Totals .....	\$807,047 66	\$807,047 66

*Robert K. Smith, A. J. Coleman, and A. H. Latimer, as Direct Tax Commissioners for the State of Texas.*

	Dr.	Cr.
(Report 7.)		
To direct tax .....	\$355,106 67	
To penalties collected .....	14,578 28	
To interest collected .....	12,955 00	
To costs collected .....	5,879 18	
To excess collected .....	45 21	
By cash deposited .....		\$130,008 06
By salaries paid .....		3,463 36
By stationery and postage .....		384 50
By advertising and printing .....		212 50
By rent of office .....		150 00
By traveling expenses .....		271 00
By miscellaneous expenses .....		266 24
By taxes uncollected .....		174,265 16
(Report 24.)		
By miscellaneous credits .....		28,878 69
By balance due United States .....		50,464 83
Totals .....	\$388,364 34	\$388,364 34
To balance .....	50,464 83	

*John Hawzhurst, W. J. Boreman, and Gillet F. Watson, as Direct Tax Commissioners for the State of Virginia.*

	Dr.	Cr.
(Report 1.)		
To direct tax .....	\$937,550 67	
To penalties collected .....	51 24	
To interest collected .....	46 24	
To costs collected .....	219 62	
To excess collected .....	30 49	
To proceeds sales of land .....	28,228 97	
By cash deposited .....		\$45,575 61
By tax on land bid in by United States .....		92 07
By tax transferred to successors .....		919,985 95
By cash transferred to successors .....		473 60
Totals .....	\$966,127 23	\$966,127 23

*Statement of the Account with the First Board of Commissioners for the State of Virginia, as recommended by this Commission.*

	Dr.	Cr.
To direct tax .....	\$937,550 67	
To penalties collected .....	51 24	
To interest collected .....	46 24	
To costs collected .....	219 62	
To excess collected .....	30 49	
To sales of land .....	\$28,400 00	
Less tax on land .....	171 03	
	28,228 97	
By balance due United States .....		\$171 03
By cash deposited .....		45,575 61
By tax on land bid in for United States .....		92 07
By tax transferred to successors .....		919,814 92
By cash transferred to successors .....		473 60
Totals .....	\$966,127 23	\$966,127 23
To balance due United States .....	171 03	

John Hawzhurst, Gillet F. Watson, and A. Lawrence Foster, as Direct Tax Commissioners for the State of Virginia.

	Dr.	Cr.
(Report 2.)		
To taxes received from predecessors	\$919,985 95	
To cash received from predecessors	473 60	
To penalties collected	329 71	
To interest collected	2,787 90	
To costs collected	3,332 45	
To excess collected	264 19	
To proceeds sales of land	84,897 70	
To proceeds redemptions	528 35	
To collections in territory assigned to West Virginia	27,728 40	
By cash deposited		\$497,322 29
By tax on salaries deposited		914 87
By salaries paid		31,652 64
By stationery, etc., \$463 72; advertising, etc., \$5,191 49		5,655 21
By rent of office		525 50
By traveling expenses, \$2,510 78; miscellaneous expenses, \$722 16		3,232 94
By tax on land bid in for the United States		112 56
By amount refunded on redemption		4,484 37
By tax uncollected		286,499 37
By tax apportioned to West Virginia		208,479 65
(Report 21.)		
By salaries paid		35 25
By advertising and printing		472 60
By miscellaneous expenses		941 00
Totals	\$1,040,328 25	\$1,040,328 25

Statement of the account with the second Board of Commissioners for the State of Virginia, as recommended by this Commission.

	Dr.	Cr.
To taxes from predecessors	\$919,814 92	
To cash from predecessors	473 60	
To penalties collected	329 71	
To interest collected	2,787 90	
To costs collected	3,332 45	
To excess collected	264 19	
To proceeds sales	\$85,455 57	
Less tax on sales	350 91	
	85,104 66	
To proceeds redemptions	528 35	
To collections in West Virginia	27,728 40	
To balance	171 03	
By cash deposited		\$498,237 16
By salaries paid		31,687 89
By stationery and postage		463 72
By advertising and printing		5,664 09
By rent of office		525 50
By traveling expenses, \$2,510 78; miscellaneous expenses, \$1,663 16		4,173 94
By tax on land bid in for United States		155 96
By amount refunded on redemptions		4,484 37
By tax uncollected		286,662 93
By tax apportioned to West Virginia		208,479 65
Totals	\$1,940,535 21	\$1,940,535 21
By balance		171 03

## EXHIBIT No. 47.

JULY 20, 1886.

Hon. J. N. DOLPH, United States Senate:

DEAR SENATOR: In support of some of the propositions by me submitted to you in relation to the direct tax matter, I have gone to the pains of examining the census reports of the population of the several States and Territories for 1860 and 1880, a table of which I have prepared, and a copy whereof I now inclose you herewith.

An examination thereof, which shows the difference in population in Oregon between 1860 and 1880, will be a guide to determine the difference thereof in 1864 and 1886. But a similar difference in population will, I think, apply equally, or as near as may be, to each of the other States.

Yours truly,

JOHN MULLAN,

State Agent and Counsel for California, Oregon, and Nevada.

Table showing the population of the several States and Territories in 1860 and 1880, as taken from the Official Census Reports.

NAME OF STATE OR TERRITORY.	Population in 1860.	Population in 1880.	NAME OF STATE OR TERRITORY.	Population in 1860.	Population in 1880.
Alabama	529,121	1,262,505	New York	3,880,735	5,082,871
Arkansas	324,335	802,525	North Carolina	661,563	1,399,750
California	379,994	864,694	Ohio	2,239,511	3,198,062
Colorado	34,277	194,327	Oregon	52,465	174,768
Connecticut	460,147	622,700	Pennsylvania	2,906,215	4,282,891
Delaware	110,418	146,608	Rhode Island	174,020	276,531
Florida	78,679	269,493	South Carolina	301,302	995,577
Georgia	595,088	1,542,180	Tennessee	834,082	1,542,359
Illinois	1,711,951	3,077,871	Texas	429,649	1,591,749
Indiana	1,350,428	1,978,301	Vermont	315,098	332,286
Iowa	674,913	1,624,615	Virginia	1,105,453	1,512,565
Kansas	107,204	996,096	West Virginia		618,457
Kentucky	930,201	1,648,690	Wisconsin	775,881	1,315,497
Louisiana	376,276	939,946	Arizona		40,440
Maine	628,279	648,936	Dakota	4,837	135,177
Maryland	599,860	934,943	Dist. of Columbia	71,895	177,624
Massachusetts	1,231,066	1,783,085	Idaho		32,610
Michigan	749,113	1,636,937	Montana		39,159
Minnesota	172,123	780,773	New Mexico	93,516	119,565
Mississippi	354,674	1,131,597	Utah	40,244	143,963
Missouri	1,067,081	2,168,380	Washington	11,594	75,116
Nebraska	28,826	452,402	Wyoming		20,789
Nevada	6,857	62,266			
New Hampshire	326,073	346,991	Total population.	31,443,321	50,155,783
New Jersey	672,017	1,131,116			

Total population in 1870	38,558,371
Total population in 1850	23,191,876
Total population in 1840	17,069,453
Total population in 1830	12,866,020
Total population in 1820	9,633,822
Total population in 1810	7,239,881
Total population in 1800	5,308,483
Total population in 1790	3,929,214

JULY 18, 1886.

Hon. J. N. DOLPH, United States Senate:

DEAR SENATOR: I have maturely considered the suggestion you make in connection with the provisions of the Direct Tax Bill, as contained in the amendment of Senator Hampton to the Georgia Bill in this, to wit: "That



the State of Oregon might possibly be called upon to pay into the Federal Treasury an amount greater than that which she would receive from the refund as provided for by Senator Hampton's amendment."

I cannot for the life of me see how said suggestion can possibly rest on any solid foundation, and because in the first place Oregon as a State does not either directly or indirectly pay any money into the Federal Treasury, nor do her people pay any money into their State Treasury in order to pay the same or with any expectation of its being paid into the Federal Treasury, and because whatever sums are by the people of Oregon paid into their own State Treasury are for purposes exclusively State or local, and not for purposes that are in any wise Federal; nor are any taxes that are levied upon or collected from the people of the State of Oregon, either by virtue of any State or Federal laws, expended for any purposes that are exclusively Federal. It is true that the people of the State of Oregon contribute constantly towards the General Fund in the Federal Treasury, but even their contribution is based exclusively and limited solely by their own consumption of articles imported, and which bear or pay a Federal tariff, or the character of their local manufacturing enterprises which pay a Federal internal revenue tax into the Federal Treasury; and these are increased or diminished by causes entirely foreign to and immaterial of the fact whether the wants of the General Government are few or many, and irrespective of the sums of money in the Federal Treasury, or the specific purposes for which they are appropriated.

These two factors, be they constant or be they variable quantities, are not in anywise measured or affected by the amount of money that might be taken from the Federal Treasury with which to refund this direct tax.

The disproportion between the population of the State of Oregon, as same exists now, and as it existed in 1864, when Oregon assumed the payment of this direct tax, would, and I think does, equally (or very nearly so) apply to each and all the other States.

So that Oregon certainly would not have any valid grounds of complaint as against the other States, or against any of them, and because Oregon, like the other States, would have refunded to her—as would be refunded to each of them respectively—just the exact amount of money that she had contributed to the Federal Treasury on account of said direct tax, and in the same manner as contributed by any other States, and not otherwise.

The proposition of Senator Hampton's bill goes to this extent only, to wit: that if a State has put into the Federal Treasury any sum constituting the said Direct Tax Fund, then she draws out just that identical sum, and no more and no less. Surely no public proposition could be more fair or more equitable (in view of all the circumstances that now surround the situation of said tax, and as the same appears upon the records of the Treasury Department); and because if a State has not contributed anything towards said Direct Tax Fund in the Federal Treasury, she then draws nothing out; and if she draws anything out, it is simply and only that identical sum that she put in, and not otherwise.

It might possibly be Oregon's misfortune when the refund takes place (should it fortunately take place) that Oregon had not heretofore contributed to this fund a sum larger than she actually has; but when Oregon remembers that she, like any other State, would draw out—like them—just what she put in, I can't see where lays her ground for valid objection, and especially, too, when it is remembered that whatever sum is refunded comes out of a surplus now in the Treasury, and is not paid out of a sum to be raised by direct taxation either upon the several States or upon the

people of any thereof, and the sum which any State would receive would practically be so much made by such State; and I respectfully submit that that which any one State would receive would not be paid at the expense of any other State.

You are aware, Senator, of course, that as a general proposition the amounts of money frequently paid *out* of the Federal Treasury for the benefit of matters and things in any particular State, are not in proportion to the amounts of money that the people of such States pay *into* the Federal Treasury. On the contrary, they are sometimes just the reverse, and even at times the sums that some States draw out of the Federal Treasury are *inversely proportional* to the sums that the people of such States put into the Federal Treasury; a condition of things depending upon so many factors, constant and variable, that it is often difficult, even if it be at all possible, to ascertain or determine just how such things do occur; but that they do occur all careful students of current events, I think, do and must admit.

Whereas, so far as I know, this amendment of Senator Hampton is one of the very few propositions ever submitted to Congress wherein and under and by which the amounts of money sought to be appropriated toward any State (and to each and all alike) was and is to be the exact amount that such State had paid into the Federal Treasury in some way or another on account of the direct tax, and not otherwise.

To practically illustrate some of the foregoing propositions, take for instance the present River and Harbor Bill as it has just passed the Senate, and as the same appears reported on pages 7464 to 7469 of yesterday's Congressional Record, and wherein sundry sums, aggregating in all between half a million and one million of dollars, are appropriated for the rivers and harbors in the State of Oregon.

Now, surely, these appropriations are not based upon the theory that the people of the State of Oregon had paid into the Federal Treasury these identical sums; nor, on the other hand, would a *valid* objection lie to making these appropriations because of the allegation that Oregon had not so paid any such sums into the Federal Treasury; or, because in default thereof, some other State would be taxed in any sum with which to pay said appropriation; (for instance, the States of Colorado and Nevada, neither of which have rivers or harbors to improve for commercial purposes, or be defended for the general welfare). Nor would a valid objection lie thereto because or by virtue of making such appropriations any particular State would thereby lose more than she would make, or because any State might be called upon to pay out more than she would get back in such premises.

But, on the contrary, I take it for granted that the valid and public reason why all such appropriations are made is that it is *just* and *fair* and *equitable* to make them. So too I submit, with every proper respect for the opinions and views of others, that Senator Hampton's amendment should pass because it is *just* and *fair* and *equitable* to pass it.

In my opinion, it seldom falls to the lot of the Senate to consider a public question so free from *valid* objections as this of Senator Hampton, or one so just and fair, *because* it does full equity (as near as may be), to every State, by including all, and excluding none.

In the foregoing I make no reference to views which all statesmen are supposed to always take in all matters of conflict, whenever the same arise, between the several States and the United States, and wherein, as in this case, considerable friction has heretofore quite frequently arisen, and is now constantly arising; and wherein I submit a pacific adjustment of all thereof is of more vital importance to the general welfare than any consideration that can possibly be given as to the exact number of dollars and

cents it might possibly cost any one State, even if it should cost a State anything at all in dollars and cents, which I respectfully submit in this case it does not, and *because it cannot*.

I believe a majority of all Senators, who have given this subject any mature consideration, are in favor of passing Senator Hampton's amendment, and I also believe that if this amendment should pass the Senate that it will pass the House, under even a suspension of the rules.

Very many Republicans in the House, men like Messrs. Ramsey, Hepburn, Price, Burrows, Little, and others, not only favor Senator Hampton's proposition, *but even favor it strongly*; and the difficulty, all along, has seemed to be that a few Democrats in the House have been so weak-kneed that an adoption of these views might possibly in some way affect their reelection to the next Congress; and I am further of the opinion, if the Senate should pass Senator Hampton's amendment, that even this objection on the part of such Democrats would not only be removed, but that many of them now on the fence would try even to make political capital out of their vote in favor of it.

I hope, therefore, Senator, when you come to further and more maturely reflect over this matter and of this suggestion, as it has occurred to you in regard thereto, that you will not permit the same to ripen into a valid objection, either to the favorable consideration or the ultimate passage of Senator Hampton's amendment, which to me, view it as I may, seems to be in all respects one of the most equitable and fair propositions that was ever submitted to Congress in order to amicably terminate a conflict now existing between the United States and many of the several States, and which has got to be settled, sooner or later, and in a manner that will be satisfactory to the great majority of all the States.

Very truly yours,

JOHN MULLAN,

State Agent and Counsel for California, Oregon, and Nevada.

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## EXHIBITS

TO

# MODOC CLAIM.

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**EXHIBIT No. 1.**

[Copy.]

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT, }  
SACRAMENTO, CAL., March 7, 1882. }

JOHN MULLAN, *Esq.*, Washington, D. C.:

SIR: In reply to your favor of the seventh instant, relative to prosecuting the claim of this State against the United States for money expended by it during the Modoc Indian War, I herewith authorize you, on behalf of the State of California, to represent the same in endeavoring to recover such amount as may be found due and owing by the United States Government and [to] the State of California, on the express conditions and stipulations stated in your communication of the date above cited.

Very respectfully,

GEO. C. PERKINS,  
Governor of California.

**EXHIBIT No. 2.**

Forty-seventh Congress, first session. S. 1502. Report No. 306.

In the Senate of the United States. March 17, 1882—Mr. Miller of California asked and by unanimous consent obtained leave to bring in the following bill, which was read twice, and referred to the Committee on Military Affairs.

March 22, 1882—Reported by Mr. Harrison with an amendment, viz.: Insert the part printed in *italics*.

**A BILL**

*For the relief of the State of California and the citizens thereof.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be and he is hereby authorized and required to pay to the State of California, and to the citizens thereof, or to their heirs, legal representatives, or assignees, the sum of four thousand four hundred and forty-one dollars and thirty-three cents, for arms, ammunition, supplies, transportation, and services of the volunteer forces in the suppression of Indian hostilities in said State in the years eighteen hundred and seventy-two and eighteen hundred and seventy-three, and as the same were specifically reported to Congress by the Secretary of War December fifteenth, eighteen hundred and seventy-four, in his report transmitted to the House of Representatives on the Modoc war claims of California and Oregon, and as found due and reported to said Secretary by General James A. Hardie, United States Army, November twentieth, eighteen hundred and seventy-four; and said sum is hereby appropriated for the purpose aforesaid, out of any money in the Treasury not otherwise appropriated.*

Forty-seventh Congress, first session. Senate. Report No. 306.

In the Senate of the United States. March 22—Ordered to be printed.  
Mr. Harrison, from the Committee on Military Affairs, submitted the following

### REPORT.

[To accompany bill S. 1502.]

The Committee on Military Affairs, to whom was referred "a bill for the relief of the State of California and the citizens thereof" (S. 1502) respectfully report:

That by an Act of Congress, passed June 18, 1874, the Secretary of War was required "to ascertain the amount of expenses claimed to be necessarily incurred by the States of Oregon and California, or the citizens thereof, for arms, ammunition, supplies, transportation, and services of the volunteer forces in the suppression of Indian hostilities in said States in the years eighteen hundred and seventy-two and eighteen hundred and seventy-three, and report the same to Congress at the next session, together with the names of persons who claim to be entitled to relief, together with a statement of the facts and sums upon which such report may be based."

In obedience to the requirements of this Act the Secretary of War, on the twentieth June, 1874, issued an order detailing Inspector-General James A. Hardie to make the examination and report called for by the Act. On the twentieth November, 1874, General Hardie submitted his report to the Secretary of War, who on the fifteenth December following transmitted it to Congress, and the same was published as Ex. Doc. 45, House of Representatives, second session, Forty-third Congress. From this report it appears that a thorough examination was made on the ground of all the claims presented. The necessity for calling out the State troops to aid the troops of the United States in protecting the settlers and suppressing the Indian outbreak cannot, the committee think, be questioned. These State troops reported to and in the main acted under the orders of the officers of the United States, and the committee think that the reasonable expenses incident to the service of these troops should be paid.

The rules adopted by General Hardie in arriving at the proper amount to be paid are thus stated by him in his report:

In this condition of things it would seem fair that the United States should pay into the State Treasury the amount of the obligations of the State for the purchase of arms and munitions, cavalry and quartermaster horses and military supplies; for transportation, forage, medical attendance, and the necessary citizens' labor employed, at such rates as the United States was paying on the spot at the time. On account of pay of troops the reimbursement can only reasonably extend to such an amount as the United States would have paid the same officers and the same men had they been mustered into the service. For the hire of the cavalry horses, upon which the troops were mounted, the United States' scale of commutation should be allowed. For subsistence the number of rations which the troops would have consumed had they been regularly mustered into the service, commuted at the cost price of the ration where they served, fixes the rate of reimbursement. For the clothing, an amount should be reimbursed the State equal to the usual commutation allowance of clothing to volunteers when called into service.

We think this basis of adjustment right. After carefully examining each claim and rejecting such as did not come within the rules we have stated, and such as were not sufficiently proved, General Hardie reports that the amount due to the State of California, and to the citizens thereof, on account of the service of the State troops in the years 1872 and 1873, in connection with what is known as the Modoc War, and including all expenses incident to such service, is the sum of ———.

The committee believe that the sum of four thousand four hundred and forty-one dollars and thirty-three cents (\$4,441 33) is fairly due to the State of California, and to the citizens thereof, in the several sums allowed to each in the report of General Hardie before referred to. We therefore recommend the passage of this bill with an amendment, which is shown at the foot thereof.

### EXHIBIT No. 3.

Forty-seventh Congress, first session. H. R. 4244. Printer's No., 4624.

In the House of Representatives. February 13, 1882—Read twice, referred to the Committee on Military Affairs, and ordered to be printed.  
Mr. Berry introduced the following bill:

### A BILL

*For the relief of the State of California, and the citizens thereof.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be and he is hereby authorized and required to pay to the State of California, and to the citizens thereof, or to their heirs, legal representatives, or assigns, the sum of four thousand four hundred and forty-one dollars and thirty-three cents, for arms, ammunition, supplies, transportation, and service of the volunteer forces in the suppression of Indian hostilities in said State in the years eighteen hundred and seventy-two and eighteen hundred and seventy-three, and as specially reported to Congress by the Secretary of War December fifteenth, eighteen hundred and seventy-four, in his report transmitted to the House of Representatives on the Modoc war claims of California and Oregon, and as found due and reported to said Secretary by General James A. Hardie November twentieth, eighteen hundred and seventy-four.*

### EXHIBIT No. 4.

Forty-seventh Congress, first session. S. 145. Report No. 114.

In the Senate of the United States. December 6, 1881—Mr. Grover asked and by unanimous consent obtained leave to bring in the following bill; which was read twice and referred to the Committee on Military Affairs.

February 2, 1882—Reported by Mr. Harrison with amendments, viz.: Omit the parts struck through and insert the parts printed in *italics*.

### A BILL

*To reimburse the State of Oregon for moneys paid by said State in the suppression of Indian hostilities during the Modoc war, in the years eighteen hundred and seventy-two and eighteen hundred and seventy-three.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be and he is hereby authorized and directed to pay to the State of Oregon the sum of seventy thousand two hundred and sixty-eight dollars and eight*

*cents, in full for moneys paid by said State in suppressing Modoc Indian hostilities during the Modoc war, and in defending the State from invasion by said Indians, during the years eighteen hundred and seventy-two and eighteen hundred and seventy-three; the said sum of seventy thousand two hundred and sixty-eight dollars and eight cents is hereby appropriated for such purpose out of any moneys in the Treasury not otherwise appropriated.*

Forty-seventh Congress, first session. Senate. Report No. 114.

In the Senate of the United States. February 2, 1882—Ordered to be printed.

Mr. Harrison, from the Committee on Military Affairs, submitted the following

### REPORT.

[To accompany bill S. 145.]

The Military Committee, to whom was referred the bill (S. 145) to reimburse the State of Oregon for moneys paid by said State in the suppression of Indian hostilities during the Modoc war in the years 1872 and 1873, respectfully report:

That by an Act of Congress passed June 18, 1874, the Secretary of War was required "to ascertain the amount of expenses claimed to be necessarily incurred by the States of Oregon and California, or the citizens thereof for arms, ammunition, supplies, transportation, and services of the volunteer forces in the suppression of Indian hostilities in said States in the years 1872 and 1873, and report the same to Congress at the next session, together with the names of persons who claim to be entitled to relief, together with a statement of the facts and sums upon which such report may be based."

In obedience to the requirements of this Act, the Secretary of War on the twentieth June, 1874, issued an order detailing Inspector-General James A. Hardie to make the examination and report called for by the Act. On the twentieth November, 1874, General Hardie submitted his report to the Secretary of War, who on the fifteenth December following transmitted it to Congress, and the same was published as Ex. Doc. 45, House of Representatives, second session Forty-third Congress. From this report it appears that a thorough examination was made on the ground of all the claims presented. The necessity for calling out the State troops of Oregon to aid the troops of the United States in protecting the settlers and in suppressing the Indian outbreak cannot, the committee think, be questioned. These State troops reported to and in the main acted under the orders of the officers of the United States, and the committee think that the State should be paid the reasonable expenses incident to the service of these troops.

The rules adopted by General Hardie in arriving at the proper amount to be paid to the State of Oregon are thus stated by him in his report:

In this condition of things it would seem fair that the United States should pay into the State Treasury the amount of the obligations of the State for the purchase of arms and munitions, cavalry and quartermaster horses, and military supplies; for transportation, forage, medical attendance, and the necessary citizens' labor employed, at such rates as the United States was paying on the spot at the time. On account of pay of troops the reimbursement can only reasonably extend to such an amount as the United States would have paid the same officers and the same men had they been mustered into the service. For the hire of the cavalry horses upon which the troops were mounted the United States' scale of commutation should be allowed. For subsistence the number of rations which the troops would have consumed had they been regularly mustered into the service, com-

puted at the cost price of the ration where they served, fixes the rate of reimbursement. For the clothing an amount should be reimbursed the State equal to the usual commutation allowance of clothing to volunteers when called into service.

We think this basis of adjustment right. The law of the State of Oregon in force at the time expressly provided that the militia when called into service should receive the compensation allowed by law to the troops of the United States. After carefully examining each claim and rejecting such as did not come within the rules we have stated, and such as were not sufficiently proved, General Hardie reports that the amount due to the State of Oregon on account of the service of the State troops in the years 1872 and 1873 in connection with what is known as the Modoc war, and including all expenses incident to such service, is the sum of \$70,268 08. The committee believe this sum to be fairly due to the State of Oregon and recommend that the bill be amended by striking out the words "one hundred and thirty-one thousand dollars," wherever they appear in the bill, and inserting in lieu thereof the words "seventy thousand two hundred and sixty-eight dollars and eight cents," and as thus amended we recommend the passage of the bill.

### EXHIBIT No. 5.

#### AN ACT

*To reimburse the State of Oregon and State of California, and the citizens thereof, for moneys paid by said States in the suppression of Indian hostilities during the Modoc war, in the years eighteen hundred and seventy-two and eighteen hundred and seventy-three.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be and he is hereby authorized and directed to pay to the State of Oregon the sum of seventy thousand two hundred and sixty-eight dollars and eight cents, in full for moneys paid by said State in suppressing Modoc Indian hostilities during the Modoc war, and in defending the State from invasion by said Indians, during the years eighteen hundred and seventy-two and eighteen hundred and seventy-three; the said sum of seventy thousand two hundred and sixty-eight dollars and eight cents is hereby appropriated for such purpose out of any moneys in the Treasury not otherwise appropriated.*

SEC. 2. That the Secretary of the Treasury be and he is hereby authorized and required to pay to the State of California, and to the citizens thereof, or to their heirs, legal representatives, or assignees, the sum of four thousand four hundred and forty-one dollars and thirty-three cents, for arms, ammunition, supplies, transportation, and services of the volunteer forces in the suppression of Indian hostilities in said State in the years eighteen hundred and seventy-two and eighteen hundred and seventy-three, and as the same were specifically reported to Congress by the Secretary of War December fifteenth, eighteen hundred and seventy-four, in his report transmitted to the House of Representatives on the Modoc war claims of California and Oregon, and as found due and reported to said Secretary by General James A. Hardie, United States Army, November twentieth, eighteen hundred and seventy-four; and said sum is hereby appropriated

for the purpose aforesaid out of any money in the Treasury not otherwise appropriated.

Approved January 6, 1883.

United States Statutes at Large, page 399, chap. 12.

### EXHIBIT No. 6.

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE, }  
WASHINGTON, D. C., June 23, 1886. }

SIR: As requested in your letter of the seventeenth instant, I inclose herewith statement of the account of the State of California, for expenses incurred by said State during the "Modoc Indian War."

The amount was credited the State under Act of Congress, approved January 6, 1883, and applied to the sum of \$7,588 98\*, delinquent and due on account of direct tax.

Very respectfully, etc.,

JNO. S. WILLIARD, Auditor.

Jno. S. Mullan, Esq., No. 1310 Conn. Ave., Washington, D. C.

\* Should be \$7,093 26.

*Memorandum of Amounts paid by the State of California for Transportation of Arms, etc., during the years 1873 and 1874. Expenses occasioned by the "Modoc War."*

Wells, Fargo & Co. January 10, 1873. Transportation of four cases arms and four boxes ammunition from Sacramento to Reno. 1,460 pounds, at three-quarters cents per pound—\$47 45; also amount paid Thos. Skadden on the above from Reno to Dorris Bridge—\$87 84. Total.....	\$135 29
Wells, Fargo & Co. March 3, 1873. Transportation of arms to Siskiyou.....	186 75
Wells, Fargo & Co. May 21, 1873. Transportation of eight cases of arms to Redding.....	45 10
Johnson & Hearn (Redding). June 6, 1873. Transportation of arms from Sacramento to Scott's Bar.....	66 00
Central Pacific R. R. Co. June 20, 1874. Transportation of arms, etc., from Scott's Bar to Sacramento.....	62 58
Total.....	\$495 72

Treasury Department, Third Auditor's Office, June 23, 1886.

LEE W. FUNK.

## EXHIBITS

TO

# INDIAN WAR CLAIM.



**EXHIBIT No. 1.**

[Copy.]

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT, }  
SACRAMENTO, CAL., July 12, 1882. }

*Captain JOHN MULLAN, Washington, D. C.:*

DEAR SIR: In reply to your favor of the twenty-second ultimo, relative to certain claims of this State against the United States, for money expended and indebtedness assumed in repelling invasions, suppressing insurrections and Indian hostilities, I hereby authorize you, on behalf of the State of California, to represent the same in endeavoring to recover such amount as may be found due and owing by the United States Government to the State of California, on the express condition stated in your communication of the twenty-second ultimo.

Very respectfully,

GEORGE C. PERKINS,  
Governor of California.

**EXHIBIT No. 2.**

**REPORT OF THE JOINT COMMITTEE OF THE SENATE AND  
ASSEMBLY ON THE INDIAN WAR INDEBTEDNESS.**

SACRAMENTO, February 21, 1872.

MR. PRESIDENT: The Committee on Claims of both Houses, to whom was referred the matter of the Indian war indebtedness of the State, beg leave to submit the following report:

**HISTORY OF THE INDEBTEDNESS.**

Being impressed with the belief that a complete history of the matter is necessary to its perfect comprehension, we have deemed it proper to commence at the beginning and trace its various fortunes up to the present time.

The war bonds of 1851 were issued in pursuance of the Act of February 15, 1851 (Statutes of 1851, page 520), the first section of which reads as follows:

SECTION 1. By virtue of the power given to the Legislature by the Constitution of this State, Article VIII—in case of war to repel invasion or suppress insurrection—a loan not exceeding \$500,000 is hereby authorized to be negotiated upon the faith and credit of the State, payable in ten years, and at any period after five years at the pleasure of the State; said loan to bear a rate of interest not exceeding twelve per cent per annum, payable annually or semi-annually, at such place as the contracting parties may agree; *provided*, however, that the interest of the first year may be paid in advance out of the loan thus made.

The interest was made payable semi-annually, and fell due in March and September of each year.

The bonds of 1852 were issued in pursuance of the Act of May 3, 1852 (Statutes 1852, page 59), the first section of which reads as follows:

SECTION 1. A sum not exceeding \$600,000 is hereby appropriated and set aside as an additional War Fund, payable in ten years out of any moneys which may be appropriated by Congress to defray the expenses incurred by the State of California, and interest thereon at the rate of seven (7) per cent per annum, in the suppression of Indian hostilities, or out of the proceeds of the sale of any public lands which may be donated or set aside by Congress for that purpose; and should no such appropriation or donation be made, or if an amount sufficient should not be appropriated or donated within the said ten years, then the bonds authorized to be issued by this Act shall be good and valid claims against the State, and shall be paid out of any moneys in the Treasury not otherwise appropriated, to pay the expenses of the expeditions mentioned in this Act.

The interest was made payable in annual installments, and fell due in January of each year.

Under this Act further appropriations were made in 1853, as follows:

By Act of 16th April.....	\$23,000
By Act of 16th April.....	2,500
By Act of 18th May .....	23,000

It is thus seen that by the Act of 1851 the bonds were issued upon the same terms as other bonds, and that by the Act of 1852 the State expressly bound herself to pay them, if the General Government did not.

The bonds of 1857 were issued on far different terms, as the following section from the Act authorizing their issue will show (Statutes 1857, page 262):

SECTION 1. A sum not exceeding \$410,000 is hereby appropriated and set apart as a "War Fund," payable out of any moneys that may be appropriated by Congress to this State, to defray the expenses incurred in the suppression of Indian hostilities, as specified in this Act.

The bondholders therefore took these bonds with the express understanding that they must look to the General Government for their redemption. It is sufficient to say that an appropriation was made by Act of Congress, March 2, 1861 (Statutes at Large, Vol. XII, page 199), for this purpose. The money was paid into the State Treasury, and the matter is at an end.

We have only, then, to deal with the issue of 1851 and 1852. An appropriation to pay these bonds with interest was made by Congress, August 5, 1854, in the following terms (Statutes at Large, Vol. X, page 583):

SECTION 1. *And be it further enacted*, that the Secretary of War be and he is hereby authorized and directed to examine into and ascertain the amount of expenses incurred by the State of California in the suppression of Indian hostilities within the said State prior to the first day of January, Anno Domini 1854, and that the amount of such expenses, when so ascertained, be paid into the Treasury of said State; *provided*, that the sum so paid shall not exceed in amount the sum of \$924,259 65, which amount is hereby appropriated out of any moneys in the Treasury not otherwise appropriated.

On May 4, 1855 (Statutes 1855, page 241), the Legislature passed an Act for the purpose of utilizing this appropriation, the Act in substance providing for the surrender of the war bonds of 1851 and 1852, it being thought at that time that the whole amount appropriated by Congress would be paid into the State Treasury. In this the State and bondholders were mistaken, as the following extracts from the message of Governor Bigler will show (Senate Journal, seventh session, page 27):

By reference to pages 582 and 583 of the United States "Statutes at Large" of 1854, it will be seen that the section numbered three [9] of the Act making appropriations for the support of the army, directs the Secretary of War "to examine into and ascertain the

amount of expenses incurred and now actually paid by the State of California in the suppression of Indian hostilities within the said State prior to the first day of January, A. D. 1854, and that the amount of such expenses, when so ascertained, be paid into the Treasury of the said State."

In compliance with the provision of law above quoted, the Act of last session was passed, and statements certified by the proper constitutional officers, duly forwarded by me to Washington City, under the impression that nothing further was necessary or requisite under the law of Congress, to authorize the prompt and immediate payment into the State Treasury of the sum appropriated by Congress.

This impression, however, it seems was incorrect, and the Secretary of War positively refused to pay to the State the amount due and appropriated until he shall have examined the accounts and vouchers on which the original warrants or bonds were issued.

These accounts and vouchers, it is proper here to remark, are a part of the archives of the State, and as such are required to be kept at the seat of government, as constituting not only a complete history and exposé of the several Indian wars, but as a basis of the action of the Controller and Board of Commissioners of the War Debt, and as such their proper place is among the records of the State.

Under the law no officer of the Government has the right, if he so desired, to remove them without express legislative authority, either for the satisfaction or information of an officer of the Federal Government, or for any other purpose whatever.

The law of Congress which was intended to govern the action of the Secretary of War, in my opinion, does not require his examination into the propriety or necessity of any or all of the expenditures of the State in the suppression of Indian hostilities; but directs him to "examine into and ascertain the amount of expenses incurred and actually paid," and upon such ascertainment to pay the same into the Treasury of the State of California; provided such amount should not exceed the sum of \$924,259 65.

The Secretary of War, however, has deemed it his duty to require the original vouchers and papers, and to refuse payment of the amount appropriated until they shall have been furnished.

Although fixed in the belief that so far as the State of California is concerned the requirements of the law of Congress on the subject have been, on her part, fully complied with, and that the Secretary of War, having from statements authenticated by the proper State officers "*ascertained the amount actually paid*," should without further question or delay, in accordance with the law of Congress, have paid the amount appropriated "into the Treasury of the State of California," it is neither my intention nor desire in this communication to call in question or advert to the propriety of justice of the action of the Secretary of War in the premises, further than to dissent from the correctness of his decision, as being, in my opinion, unwarranted by the language of the Act of Congress making the appropriation, and also to express sincere regret that months of delay in payment must, under the circumstances, necessarily ensue, burdening the State with a large sum in the shape of interest on the outstanding war bonds and warrants.

Without further comment, the whole subject is commended to your careful consideration, for such action in the premises as, under all the circumstances, may by you be deemed proper and necessary to secure to California the prompt payment of the amount long since ordered by Act of Congress into the Treasury of the State.

In accordance with resolutions of both branches of the Legislature, requesting from the Governor such information as was in his hands regarding the condition of the war debt, and its payment by the General Government, Governor Johnson transmitted a message to the Legislature on the thirty-first of January, 1856, an extract from which is given as follows (Senate Journal, seventh session, page 226):

It is needless to inquire whether the Secretary of War has misapprehended the *spirit and intent* of the Act of Congress making the appropriation, in rejecting the certified copies of vouchers forwarded him, as satisfactory evidence of the payments made by the State; neither at this time can any beneficial results attend the discussion of an issue seemingly foreshadowed by the Secretary's letter, involving a construction of the law which would invest him with discretionary power to allow or reject at pleasure specific items of expenditure which have been assumed by the State. I must confess, however, that an assumption of authority so unwarranted as I believe this to be is quite manifest, and I am apprehensive that the aid of further Congressional legislation will have to be invoked ere our State will derive the benefits of the entire sum appropriated.

If the Secretary of War shall, by virtue of the authority given him to examine into these claims, assert the right to go behind the act of the Board of Examiners, and inquire whether the demands were such as ought to have been allowed, and the evidence on which the payments were predicated, as appears of record, sufficient to sustain their decision, I doubt not that the exacting requirements of the Secretary and his auditing officers would find abundant pretexts to reduce the sum materially.

In the various military expeditions which California, in defense of her citizens, was compelled to undertake, either from inability or neglect of the General Government to provide such defense—owing to the condition of the country at those periods—with our

State credit most ruinously depreciated, prices were paid for supplies, and many expenses incurred, which to us even now would appear enormous.

Furthermore, in the settlement of accounts by the Board of Examiners, and in some few instances before committees of the Legislature, the introduction of oral testimony on behalf of claimants was permitted, which, no doubt, to them was conclusive; but, unfortunately, the evidence was not perpetuated.

From these and other causes we may be much embarrassed if the exercise of such discretionary power shall be persisted in. Whilst, therefore, hoping our fears may prove groundless, still these misgivings should suggest to our minds the necessity of extreme caution and deliberation regarding the measures now to be adopted.

Let us so fortify ourselves against all possible contingencies that further delay in securing the payment of this money may not be the fruits of our own inefficient legislation.

In the first place authority should be given to transmit to the Secretary of War the original vouchers, and at a reasonable expenditure secure the services of such person or persons as may be necessary in the prosecution of these claims before that officer. One of our present members of Congress, General J. W. Denver, and of him I speak particularly, on account of his former position as one of the Board of Examiners, will, no doubt, lend his coöperation without compensation by the State. Such assistance will be all important, as a very large portion of these claims were examined before him and allowed, and he is, consequently, possessed of an intimate knowledge of all matters connected with this indebtedness. There is another gentleman, however, A. J. F. Phelan, whose services are indispensably necessary to the successful prosecution of these claims. In this I speak partially from my own personal knowledge as well as from the testimony of the late Board of Examiners, to whose efficiency and understanding of the whole subject they voluntarily bear witness.

Mr. Phelan was the Clerk of that Board for nearly, if not quite, the entire period during which the seven per cent bonds were being issued, and from his position necessarily became familiar with all the vouchers and testimony adduced in support of the claims presented; and his usefulness to the State in connection with these claims against the Government can be readily foreseen; and I would, therefore, suggest that his services be secured, which I am advised by him can be effected on terms quite reasonable to the State.

From the foregoing it is plain that additional legislation was absolutely necessary, and thereupon followed the Act of April 19, 1856 (Statutes 1856, page 206), which created the "Board of War Debt Commissioners," and defined their powers and duties. By the terms of this Act Samuel B. Smith and J. W. Denver were appointed a Board of Commissioners to prosecute before the Secretary of War the claims of the State subject to be paid out of the appropriation above set forth. The Act then proceeds to define their duties in the matter of advertising for bids for surrender of the bonds of 1851 and 1852—the former to have the preference. This was done to secure the payment of those bonds in full in case the appropriation should be deficient, which it might well have been had payments been made up to the time of presentation. It was expected by the Legislature that payment would be so made; for Section 5 provides that the Commissioners shall "examine and compute the amount of principal and interest *due up to time of presentation for redemption*, if before the period indicated when they shall cease to bear interest; otherwise at the period so indicated." This Act of the Legislature was followed by the following Congressional enactment (Statutes at Large XI, page 91):

SECTION 8. *And be it further enacted*, that the Secretary of War is hereby authorized and directed to pay to the holders of the war bonds of the State of California the amount of money appropriated by Act of Congress approved May [August] 5, 1854, in payment of expenses incurred and now actually paid by the State of California for the suppression of Indian hostilities within the said State prior to the first day of January, A. D. 1854, under the following restrictions and regulations: before any bonds shall be redeemed by the Secretary of War they shall be presented to the Board of Commissioners appointed by the Legislature of said State, by an Act approved April 19, 1856, and the amount due and payable upon each bond be indorsed thereon by said Commissioners. Upon presentation to the Secretary of War of any bond or bonds thus indorsed it shall be his duty to draw his warrant in favor of the holder or holders thereof for the amount certified to be due upon the same by the said Commissioners upon the Secretary of the Treasury, who is hereby directed to pay the same; *provided*, that said amount in the aggregate shall not exceed the amount of money appropriated by Act of Congress approved August 5, 1854; said bonds, after redemption, and after taking off the coupons that may remain unpaid, shall be delivered to the Secretary of War to be canceled.

The Commissioners were met at the threshold by an unforeseen complication, which rendered it impossible for them to comply strictly with the terms of the Act of the Legislature; for by that Act they were compelled, as has been seen, to allow interest up to the time of presentation of the bonds, while by the ruling of the Third Auditor, which ruling was affirmed by the Secretary of War, interest could only be allowed up to the first of January, 1854. Thus it happened that no provision was made for the interest between that time and September 1, 1856, when the Commissioners advertised for surrender of bonds. The ruling of the Third Auditor rendered it unnecessary, as the Commissioners truly say, to give preference to the bonds of 1851, for by only paying interest up to January 1, 1854, the Congressional appropriation would be more than sufficient for the purpose. In order to present this matter in its clearest light, we give below the decision of the Third Auditor, with that of the Secretary of War, in affirmation (Report of Committee on Finance, in Appendix to Senate and Assembly Journal, fourteenth session):

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE, }  
September 3, 1856. }

Hon. JEFFERSON DAVIS, Secretary of War:

SIR: I have the honor to submit herewith for your consideration and decision a communication addressed to me to-day by J. W. Denver and Samuel B. Smith, Esqs., California War Debt Commissioners, inclosing a copy of a letter from them to you of the thirtieth ultimo.

In these communications the Commissioners raise two points relative to the payment of the war bonds issued by the State of California, the redemption of which is provided for by the Acts of the fifth of August, 1854, and eighteenth of August, 1856, to wit:

*First*—Whether interest upon the bonds will be allowed for any time beyond the first day of January, 1854, to which it is calculated.

*Second*—Whether any war bonds will be redeemed (upon Commissioners certifying them to be genuine, due, and payable) that were issued by the State of California in the years 1854 and 1855, in payment of expenses incurred in the suppression of Indian hostilities in said State; or, in other words, whether the money appropriated by the Act of Congress of the fifth of August, 1854, can be applied to the payment of indebtedness accruing against the State of California, either as principal or interest, since the first day of January, 1854, the same not having been included in the estimate on which the appropriation was made?

In submitting these points, I take the liberty of expressing the following opinion:

*First*—If the result of the investigation now going on in this office shall show that the sum appropriated by the Act of 1854 will be sufficient to pay the principal of the seven and twelve per cent war bonds and interest beyond the first day of January, 1854, then, in my judgment, such interest can be paid to the extent of the appropriation, up to and not beyond the fifth of August, 1854, the day the law was approved by the President; otherwise, not. But if the appropriation shall turn out to be insufficient for the satisfaction of the bonds, with interest, to the first day of January, 1854, then, in my opinion, they be paid pro rata to the extent of the appropriation.

*Second*—The admission of the Commissioners, that the war bonds issued in 1854 and 1855, either principal or interest, were not included in the estimate upon which the appropriation was made in the Act of the fifth of August, 1854, is, in my judgment, conclusive on this point.

I cannot see how the amount thus appropriated can be applied to any object outside the estimate upon which it was based, unless expressly directed by the supplemental Act of the eighteenth of August, 1856.

The latter Act contains no such special direction, and the bonds issued in 1854 and 1855, are therefore clearly excluded from all the benefits of the original appropriation.

I am, with great respect, your obedient servant,

W. H. S. TAYLOR, Acting Auditor.

The following is the decision of the honorable Secretary of War upon the foregoing report:

I concur in the view of the Third Auditor, as to the date to which interest may be calculated, and entertain no doubt as to the inapplicability of the appropriation to bonds issued after the date of the Appropriation Act of August 5, 1854, as it provided only for expenses which had been incurred prior to the first of January, 1854, in the suppression of Indian hostilities within the State of California. Should the appropriation be inade-

quate to meet the obligation for which it was provided, then it will, of course, be necessary to pay pro rata.

WAR DEPARTMENT, September 4, 1856.

JEFFERSON DAVIS, Secretary of War.

It is thus seen that the Commissioners were precluded from complying with the strict terms of the law under which they were authorized to act, and that they were thus reduced to the alternative of carrying out their instructions as nearly as possible or of throwing up their trust, and thus saddling the State with a burden of constantly accruing interest. That they did wisely in accepting the former alternative your committee have little doubt.

In order, however, to make the action of the Commissioners perfectly clear, we have deemed it best to give their two reports in full, with the exception of the tables annexed to them. Their first report can be found on page six hundred and eighteen of Senate Journal, thirteenth session, where it is incorporated in report of Senate Finance Committee. Their second report is in Appendix to Senate Journal, eleventh session:

#### REPORT OF COMMISSIONERS OF CALIFORNIA WAR DEBT.

To his Excellency J. NEELY JOHNSON, Governor of the State of California:

SIR: The Commissioners appointed by the Act of April 19, 1856, to liquidate the war debt of the State, beg leave to report:

That in accordance with the provisions of said Act, so soon after the same as practicable they opened an office in the City of Washington and made application to the Secretary of War, as by said Act directed, for payment of the sum of money appropriated by Congress in payment of expenses incurred "by the State in suppression of Indian hostilities." As evidence of said indebtedness the Commissioners submitted a certified copy of the War Bond Register of said State, the various Acts of the Legislature authorizing the issuance of said bonds, and the Journals of the Legislature exhibiting the action of that body in relation to the same; proposing, further, to deliver him the bonds issued by the State before making requisition for said money. In reply, the Secretary of War stated in substance that the proofs submitted were insufficient; that he could not recognize the bonds as evidence of the indebtedness, but that the Act of Congress of August 5, 1854, under which Act the appropriation was made, would require him to go into an examination of the original vouchers. As this course of procedure would have involved great delay and difficulty, and being satisfied from the condition of the original vouchers, which were in very many instances informal, that a large portion of them would be disallowed, we applied to Congress for relief, and a bill was introduced at our instance directing the Secretary of War to pay over the full amount of the appropriation as directed by the Legislature of the State of California. The bill meeting with violent opposition influenced to a great extent by the holders of the seven per cent bonds, who felt aggrieved at the manner of distributing the appropriation directed by said Act, and being unwilling to give our sanction to any Congressional action which might clash with the Act of the State of California, we finally submitted to the Secretary of War all the books and original papers in our possession, offering to make all necessary explanation, etc. As we had anticipated, the examination was delayed, and after several interviews with the accounting officers to whom the vouchers had been referred by the Secretary of War, and being convinced that the interest of the State would greatly suffer should a settlement be made upon such a basis, we finally agreed with the bondholders to a bill providing a pro rata distribution of the appropriation, viz.: the payment of the principal of all the bonds issued prior to January 1, 1854, and interest on the same up to that date. This bill passed. Immediately upon its passage the Commissioners advertised for the redemption of said bonds in various daily papers, a list of which will be found in the minutes of the Commissioners accompanying this report, which advertisement directed that all bonds should be presented to the Commissioners before the first day of September, after which date they would cease to bear interest. Upon an examination of the Act we found a mistake had occurred which apparently left to the Commissioners the power of carrying out the direction of the State in the disbursement of the appropriation. We immediately applied to the Secretary of War, asking his construction of the Act. It will be seen by reference to the correspondence which accompanies this report that the Secretary of War would not permit any portion of the appropriation to be applied to the redemption of bonds issued since the first of January, 1854, nor for the payment of interest accumulating since that date on bonds previously issued. This construction rendered it unnecessary to make any distinction between the seven and twelve per cent bonds, and superseded the necessity of advertising for bids as directed by the Act of California.

Under the instruction of the Secretary of War the Commissioners, as bonds were pre-

sented, certified to the genuineness of each bond, and the amount, principal and interest, due thereon up to the first day of January, 1854. The full amount certified to by the Commissioners is as follows:

Of twelve per cent bonds, principal, \$177,000; interest on the same, \$55,683 97. Of seven per cent bonds, principal, \$559,750; interest on the same, \$48,214 68. Amounting in all to \$846,048 65—a full statement of which accompanies this.

The full amount paid by the United States Government up to the fifteenth day of November, 1856, is \$814,456 84, as appears per statement of the Third Auditor, which accompanies this, leaving unpaid of the bonds at that time certified, \$26,191 81; of which, \$15,220 20 had been presented to the Secretary of War, the balance, \$10,971 61, still being in the hands of the holders. This amount has no doubt been paid in full. The interest coupons belonging to all the bonds presented to the Commissioners were detached from the bonds and distributed as follows:

Of seven per cent bonds, coupons one and two, up to January 1, 1854, were attached to the bonds and have been paid; coupons three and four, up to January 1, 1856, have been returned to the holders, stamped as follows: "California War Bond Coupon." Coupon number five, from January 1, 1856, to January 1, 1857, similarly stamped, with the amount of interest due on the same up to September 1, 1856, also stamped upon it, has also been returned to the holders. Coupons six, seven, eight, nine, and ten, representing the interest from January 1, 1857, to the maturing of the bonds, are returned to the State. Of twelve per cent bonds, coupons one, two, three, four, and five, representing the interest up to March 1, 1854, were attached to the bonds, but were paid only up to January 1, 1854, leaving on every bond a balance of \$20, interest from January 1, to March 1, 1854, due to the bondholder—for which amount the Commissioners gave their certificate, a copy of which accompanies this. Coupons six, seven, eight, nine, and ten, representing the interest due up to September 1, 1856, have been returned to the owners; and the remaining coupons, numbers eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, and nineteen, are returned to the State.

It will be seen that there are remaining unpaid of bonds issued prior to January 1, 1854, of principal, \$59,600; of interest to that date, about \$14,000; total, \$73,600. There is remaining of the appropriation, \$83,611; leaving a balance on hand, over and above the bonds and interest, up to January 1, 1854, of not less than \$10,000.

The entire amount of coupons and certificates returned to holders of redeemed bonds, and now outstanding, is \$161,120 91. The entire amount of coupons returned to the State is \$317,727 10. The bonds redeemed have been canceled, and are now on file in the Treasury Department. The General Government, by recognizing the bonds, and by the payment of interest up to January 1, 1854, have virtually assumed the entire debt, and there is but little doubt of the speedy passage of an Act making an additional appropriation to cover the unpaid coupons now outstanding, as well as the amount of bonds issued subsequent to January 1, 1854, a statement of which will be found accompanying this.

We cannot conclude our report without expressing our high appreciation of the services of Mr. A. J. F. Phelan, the Clerk of the Commission. His thorough knowledge of all the details connected with the origin of the war debt, and his faithfulness and ability in discharging the onerous duties imposed upon him by the State, has very materially aided us in accomplishing all that has been effected toward the extinguishment of the debt.

All of which is respectfully submitted.

SAM. B. SMITH,  
J. W. DENVER,  
Commissioners California War Debt.

SACRAMENTO CITY, January 5, 1857.

#### FINAL REPORT OF THE COMMISSIONERS OF THE CALIFORNIA WAR DEBT.

To his Excellency JOHN G. DOWNEY, Governor of California:

SIR: The undersigned, Commissioners appointed by the Act of April 19, 1856, to liquidate the war debt of the State, beg leave to state:

That since their last report, which was dated January 5, 1857, they have certified for redemption bonds and coupons amounting in all to \$57,633 14, which, added to the amount then reported—\$840,648 65—makes up a total of \$898,281 79 redeemed, leaving a balance outstanding of \$10,950 in bonds, which last sum, together with the interest thereon to the first day of January, 1854, is fully provided for by the appropriation made by Congress. After these outstanding bonds and coupons shall have been redeemed there will still remain a balance of the appropriation unexpended amounting to about \$10,000, but which will not be available to the State, as will hereafter be made to appear. This excess was caused by taking into the estimate on which the appropriation was made warrants or certificates issued before the first day of January, 1854, and not funded prior to that date.

By reference to our former report you will ascertain the difficulties we had to encounter at Washington when attempting to discharge the duties imposed upon us by the Act under which we were appointed. That Act provides first for the payment of the whole twelve per cent bonds, with accruing interest up to the date of redemption, and to advertise for bids and give the preference to the lowest bidders among the holders of the seven per cent bonds; but under the construction given by the Secretary of War to the Acts of Congress referring to the appropriation, it was found impossible to carry out these provisions literally. None of the money appropriated could, under the construction referred

to, be applied to the redemption of bonds issued after the first day of January, 1854, nor to the payment of interest accruing since that date. We had, therefore, to abandon the business altogether, or by conforming to the opinion of the Secretary of War, pay the principal and thereby stop the accruing interest.

As before shown, the sum appropriated by Congress was sufficient to pay all the principal and interest due on the first day of January, 1854. Having obtained the decision of the Secretary, we advertised and gave notice to the bondholders that we were ready to redeem the bonds and coupons due at that date (January 1, 1854), and that all bonds would cease to bear interest after the first day of September, 1856. Accordingly the bondholders came forward and in good faith gave up their bonds on our certificates, and received payment thereon. The coupons falling due between the first of January, 1854, and the first of September, 1856, which were unprovided for at the time the bonds were redeemed, amounting in the aggregate to the sum of \$172,828 54, were retained by the bondholders, but the coupons which would have become due after the first day of September, 1856, amounting to the sum of \$344,669 17, were given up, and are now in our possession, less those attached to the few bonds not yet redeemed. By the course thus pursued, we were enabled to relieve the State from this accruing interest, which would, as shown, had the bonds been allowed to come to maturity, have increased the debt \$344,669 17, and for the payment of which the faith and honor of the State is pledged.

No provision has as yet been made for the payment of the coupons yet outstanding, amounting to the sum of \$172,828 54. The Act of February 15, 1851, under which the twelve per cent bonds were issued, provided that the interest should be "payable annually or semi-annually," and the bonds were issued with semi-annual coupons attached. The Act of May 3, 1852, under which the seven per cent bonds were issued, provided that the interest should be paid annually, and the bonds were issued with annual coupons attached. The Legislature has never made provision for the payment of any of this interest, although the whole amount has now been due more than three years.

Good faith on the part of the State requires that these coupons should be redeemed, either by issuing to the holders, as many of them have requested, bonds bearing interest, or by payment in cash. The latter course is preferable if the condition of the Treasury will permit, as the amount is long overdue; and under the provisions of the laws authorizing the issuance of the bonds, and by the terms of the bonds themselves, the State was bound for the payment long since. Indeed, it is always better for the State to pay such indebtedness in cash, if possible, and then to call on the General Government for remuneration, for by so doing officers will be held to a more strict accountability, accounts and vouchers will be subjected to a closer scrutiny, and, in consequence, Indian wars will not be too lightly engaged in.

The coupons heretofore referred to, which would have become due after the first day of September, 1856, are as stated, now in our possession. The law at present does not authorize us to make any disposition of them. We therefore ask for permission to turn them over to the State Treasurer, to be by him destroyed, or to make such other disposition of them as the Legislature may direct.

We also request that we may be relieved from all further duties under the Act by which we were appointed. There are only twenty-nine bonds of all descriptions now outstanding with which we would have anything to do, and the duty of certifying to them can very well be devolved on some of the State officers, to whom we might be authorized to deliver the books and papers of the Commission.

Herewith we submit for your inspection a tabular statement, prepared by the very efficient Clerk of the Board, A. J. F. Phelan, Esq., which will be found full and comprehensive.

All of which is respectfully submitted.

J. W. DENVER,  
SAM. B. SMITH,  
Commissioners California War Debt.

SACRAMENTO CITY, January 30, 1860.

It may be well to supplement the final report of the Commissioners by saying that Congress authorized the using up of the surplus of the original appropriation in the redemption of bonds issued subsequent to January 1, 1854 (Statutes at Large, Volume XII, page 104), and that this was done to the extent of \$7,650 of principal (see official list in appendix), with interest up to the time of presentation, leaving a surplus still of about \$10,000. This could not be utilized, because the estimate on which the appropriation was based included that amount of claims which had not been funded by the State prior to January 1, 1854.

To state in a few words the action of the Commissioners, they indorsed as correct the bonds, with interest up to January 1, 1854; and to the holders of the bonds of 1851, the coupons of which fell due in September and March, they gave a certificate of indebtedness for the interest from Janu-

ary 1, 1854, to March 1, 1854, they detaching and keeping this March coupon. Instead of giving certificates to the holders of the bonds of 1852 for the interest from January 1, 1856, to September 1, 1856, they stamped the amount of this interest on the coupon that fell due January 1, 1857. The coupons of the bonds of 1851, from March 1, 1854, to September 1, 1856, inclusive, and those of the bonds of 1852, from January 1, 1854, to January 1, 1857, inclusive (the latter having stamped on them the interest of September 1, 1856), were detached and surrendered to the bondholders, and it is these coupons so detached, and those certificates of indebtedness, which are urged by their holders as being valid obligations of the State.

The coupons of the bonds of 1851, representing the interest from September 1, 1856, to maturity, and the coupons of the bonds of 1852, representing the interest from January 1, 1857, to maturity, were detached and retained by the Commissioners, and amounted, according to their final report, to \$344,669 17. These were destroyed by the Military Committee of both Houses, in accordance with concurrent resolution (Senate Journal, 12th session, page 779). It will be seen, on referring to the report of the committee, that the coupons destroyed amounted to the sum of \$327,207 98. The seeming discrepancy between these figures and those of the Commissioners is easily reconciled, when we call to mind the fact of the January, 1857, coupons being surrendered to the bondholders, with the interest stamped on it from January 1, 1856, to September 1, 1856. It is plain, therefore, that the coupons destroyed by the committee would not be as great as the amount returned by the Commissioners, by so much interest on the bonds of 1852 as had accrued between September 1, 1856, and January 1, 1857.

#### HISTORY OF THE CLAIMS.

None of the bonds of 1851 have ever been presented to the Legislature for redemption until the present session, there being a bill now pending for the payment of bond No. 34, issued April 1, 1851. It seems that a duplicate was issued for this bond to John C. Johnson, by Act of April 30, 1853 (Statutes 1853, page 130), and it is certain that the duplicate has been paid. The claim is accompanied by a number of papers, among them being an affidavit on the part of the holder of the bond, who claims himself to be an innocent purchaser for value, and a letter from the Board of War Debt Commissioners in support of their action in refusing to certify to the correctness of the bond. As the recommendation of this report renders it unnecessary for us to pass upon the validity of this claim, we have not devoted to it any special study.

As to the bonds of 1852, the Legislature have made appropriations for their payment as follows:

In 1865 and 1866 (page 516 of Statutes), principal and interest in full.....	\$32,500 00
In 1867 and 1868 (page 468 of Statutes), principal and interest in full.....	1,765 00
In 1869 and 1870 (page 698 of Statutes), principal and interest in full.....	2,380 00

When the bonds alone were first presented to the Legislature in 1865 and 1866, the question of their constitutionality being raised, the matter was submitted to the Judiciary Committee of the Assembly, who decided them, with but one dissenting voice, to be constitutional and valid. (See report in third volume of Appendix to Senate and Assembly Journals, sixteenth session.) A minority report was made by Mr. Luttrell, the present representative in part of the County of Siskiyou on the floor of the Assembly. This gentleman, however, recommended that a Commission be appointed



to investigate the amount and character of the Indian war indebtedness of the State, and report the result to the ensuing Legislature. (See report in Appendix, as above.) This recommendation was so far concurred in as that a committee was appointed, of which Mr. Luttrell was made Chairman. The committee, however, renewed the recommendation previously made by their Chairman, and so the matter came to naught. (See report in Assembly Journal, sixteenth session, page 630.)

No provision has ever been made for the payment of the coupons and certificates, though strenuous efforts have been made to induce such action. This seems singular, as the various committees to whom the matter was from time to time referred reported in favor of their payment.

The first time these claims were presented to the Legislature was in 1860. In that year, Governor Weller called the attention of the Legislature to the matter, and recommended that "prompt provision be made for the payment of these just demands." (See his message in Senate Journal, eleventh session.) A bill was introduced in the Senate in accordance with this recommendation, and referred to the Committee on Claims, who reported unanimously in favor of the payment of the coupons. They conclude their report as follows:

The laws authorizing the issuance of the bonds provided that the interest should be paid on the twelve per cents, semi-annually, on the first days of March and September of each year, and on the seven per cents, annually, on the first day of January of each year, from and after their issuance. The bonds carried this pledge upon their face; the coupons attached promised the same. The bonds were transferable by delivery, and no doubt passed through many different hands. Parties purchasing had a right to expect that the interest would be paid by the State as set forth on the face of the bonds. They were signed by the Controller and Treasurer of State, indorsed by the Governor, stamped with the seal of State, and it is strange that the solemn pledge of the State should not ere this have been fulfilled.

A majority of the holders of this indebtedness have, however, as your committee are informed, expressed a willingness to surrender their evidences of indebtedness, that is to say, their unpaid coupons and certificates, and receive in lieu thereof bonds of the State payable at some future date. Certainly the State cannot refuse to do this. In response to this your committee have prepared a bill, which is herewith reported, authorizing the funding of this debt and the issuance of bonds payable in the year 1870, bearing interest at the rate of seven per cent per annum, containing a provision that if the General Government shall make provision for the payment of the same at an earlier date, the State shall have the privilege of calling them in by giving sixty days notice, from and after which time they shall cease to bear interest.

In recommending the passage of this bill, your committee have only to add that they feel that at best the State has been strangely tardy in providing for the payment of this indebtedness, and they hope that the same may be favorably and at once considered by the Senate.

These claims were not before the Legislature of 1861, so far as we can ascertain; but in 1862 Governor Downey drew attention to them in his annual message of that year, as follows (Senate Journal, thirteenth session, page thirty-four:)

There is still due and unpaid the sum of \$218,468 54, on account of the Indian war debt, incurred prior to 1854, and for which an appropriation was made by Congress of \$924,259 65 (more than ample at the time to meet the whole war debt). This balance against the State on this account is mainly owing to the ruling of the Secretary of War, who refused to transfer the amount thus appropriated, declining to recognize the bonds as evidence of this debt, but requiring proof of the indebtedness by the production of the original accounts and vouchers, which in many instances had become quite impossible. Under this ruling of the Secretary interest of two years was suffered to accumulate, and the result has been this unpaid balance—consisting of interest on coupons—the sum of \$172,868 54; bonds remaining unpaid, \$38,100; interest due on the latter, \$7,500; total, \$218,468 54. These bonds mature in 1862. The faith of the State is pledged to their payment; and if Congress will not assume this debt, as it properly should, the State ought to make provisions for its liquidation.

This portion of the Governor's message was referred by the Assembly to a special committee, who reported as follows:

MR. SPEAKER: Your committee to whom was referred that part of Governor Downey's message relating to the balance due on account of Indian war debt, report:

That they find that there is now outstanding about \$220,000 of the old Indian war debt, consisting of war bonds, coupons, etc., for the payment of which the faith and credit of the State has been pledged, as will appear by an Act passed May 2, 1852, and other Acts supplementary thereto, under which said bonds were issued.

That said bonds become due and payable on the second day of May, 1862, and no provision has been made for the payment thereof.

That they have conferred with some of the holders of the aforesaid indebtedness, who claim they are entitled to the money when the same becomes due; but knowing that, from the present condition of State finances, it is impossible to meet this indebtedness with cash, they are willing to accept bonds of the State therefor.

That your committee recommend, as the best mode of settling the aforesaid indebtedness, that bonds of the State be issued, drawing interest at the rate of seven per centum per annum, payable in ten or twenty years, or out of any appropriation that may be made by the Federal Government before the lapse of said term, and respectfully submit the accompanying Act for that purpose for your consideration.

This report is signed by the whole committee of five (5), one of the number being Mr. McCullough, who subsequently became Attorney-General, and another, Mr. Machin, who subsequently became Lieutenant-Governor. A bill was introduced in the Senate providing for the funding of the coupons, as recommended by the Assembly committee, which bill was referred to the Committee on Finance, who reported unanimously in favor of the bill. Their report concludes as follows (Senate Journal, thirteenth session, page 623):

The Assembly bill provides for issuing bonds for the bonds and interest due thereon, issued *subsequent* to the first day of January, 1854, and would leave the bonds and interest due on those issued prior to that date unprovided for. This would be manifest in justice to the holders of the coupons on the old bonds. The State has pledged her faith and credit to pay them if the General Government did not provide for their payment before they fell due. This the General Government has failed to do, and the holders of the coupons look to the State to comply with her obligation. Your committee think the State should not, in the first place, have taken the course she did, in making herself liable for these debts; but having done so, her honor and credit require that she should immediately provide for meeting her obligations.

Some fault has been found with the Commissioners by some parties for returning the unpaid coupons to the bondholders. These coupons could not be paid by the terms of the Act of Congress, and the amount thereof being due to the holders, and no provision having been made to pay them, they certainly were entitled to have what belonged to them. And had it not been for the second Act of Congress providing for the manner of settlement, a very large portion of these bonds and interest thereon would not have been paid by the Congressional appropriation; but the holders would have a just and legal claim against the State, which she could not have avoided paying. Therefore, instead of any injury arising from such action to the State, she was saved several hundred thousand dollars. These coupons were long since due. They, of course, draw no interest; but the bonds to which they were attached falling due on the second day of May next, they should be settled. Congress may at some future day provide for their payment; but the holders look first to the State. We therefore recommend the passage of the Assembly Bill, with several amendments herewith presented.

The Adjutant General of the State was called on for information by resolution of the Assembly at this same session of the Legislature, and his report can be found in Appendix to Senate and Assembly Journals of the thirteenth session. He gave an opinion adverse to the payment of the coupons by the State, for the reason that the General Government had assumed their payment, and for the further reason that the Commissioners should have calculated the interest up to the time of presentation, and then made a final settlement with the holders by dividing the appropriation pro rata. As answer to these objections, it can very well be replied that whether the Government assumed the debt or not, it certainly has not paid it; and as to the action of the Commissioners, it seems clear from what has gone before that they could not do what General Kibbe says they ought to have done. But suppose they *had* done so, would there not have still resulted a balance in favor of the bondholders, for which the State would have been



liable? The Legislature, however, rejected the recommendation of their committees, and the bill to fund the coupons failed to become a law.

In 1863 these claims were again presented (the Governor—Stanford—including them in his annual message, as, indeed, he did the following year, as being a part of the State debt), and were referred to the Senate Committee on Finance. This committee divided, the Chairman—Mr. Perkins—together with Mr. Doll, presenting the most elaborate report that had yet been made upon the subject, and Mr. Birdseye and Mr. Gaskill reporting adversely. These reports can be found in Appendix to Senate and Assembly Journals of the fourteenth session. In the report of Senators Birdseye and Gaskill the following paragraph occurs, which we deem well to quote:

When these Commissioners arrived in Washington, by the consent and through the influence of the bondholders, they obtained the passage of an Act of Congress, which took the matter entirely out of the control of the State, diverted the money from the State Treasury directly to the bondholders, deprived the State of the right to call in her bonds under sale to the lowest bidders, ignored the State in the premises, set aside her trust, and destroyed her agency.

The reply to this, as your committee think, can be found in the extracts which we have made from the messages of Governors Bigler and Johnson, and from the reports that have been quoted.

If the decision of the Secretary of War in construction of the Act of 1854 had been acted on, and the money had been paid directly into the State Treasury, the State would, very likely, have failed to realize from it the face of her bonds, and for the balance she would have been liable to the bondholders; so that the Congressional Act of 1856 was directly in her interests. Her bonds had been regularly issued upon her faith and credit, and she was in honor bound to pay them to the last farthing.

The Commissioners could not have been deemed to act in bad faith or to the prejudice of the interests of the State, for these same Commissioners were authorized by the Legislature, in 1861 (page 298 of Statutes), to adjust with the General Government the war debt of 1857. Indeed, Governor Johnson, in his annual message, dated January 1, 1857, speaks as follows:

The Commissioners of the War Debt \* \* \* have discharged their duties with fidelity to the interests of the people they represented, and with most agreeable results in the adjustment of this indebtedness.

This indorsement, together with the fact that these same Commissioners were again detailed for a similar duty, and with the further fact that there is nothing in any of the reports that tends to prove that they acted any otherwise than honestly, demonstrate satisfactorily to your committee that they did what they deemed best for the interests of the State.

Your committee would further state that they have failed to find any evidence of the Commissioners having colluded with the bondholders, as is charged in the extract from the report which has been given above.

In this same year (1863) the Treasurer brought the matter of these unpaid coupons and certificates to the attention of the Governor in his annual report, and after treating the subject at some length, concludes by saying that "the State is in honor bound to pay those detached coupons, and whatever of the bonds that remain unpaid" (see Treasurer's Report in Appendix to Senate Journal, fourteenth session).

At the next session of the Legislature (that of 1863-64) the project was again brought forward to fund this indebtedness, a bill being introduced in the Senate for this purpose, and referred to the Committee on Claims, a

majority of whom made the following report. (See report of committee in Appendix to Senate Journal, fifteenth session). The minority report can be found in the same place:

MR. PRESIDENT: The Committee on Claims, to whom was referred Senate Bill No. 59, "An Act entitled an Act to provide for paying certain demands issued on the faith and credit of the State, which became due and payable on the second day of May, A. D. 1862, and to contract a funded debt for that purpose," have had the same under consideration, and ask leave to report:

That they find there is now outstanding about \$220,000 of the old Indian war debt, evidenced by and consisting of war bonds and coupons, for the payment of which the faith and credit of the State have been pledged, as will fully appear by an Act passed May 2, 1852, and other Acts supplemental thereto, under which said bonds were issued.

That said bonds, by the terms of said Acts, became due and payable on the second day of May, 1862, and no provision has been made for the payment thereof. The holders of said bonds and coupons have applied to former Legislatures to provide some way for the settlement of the aforesaid indebtedness, and your committee have carefully examined the proceedings of the various committees to whom the matter has been heretofore referred, and have been unable to discover any well founded objection to any part of this claim; on the contrary, all the arguments which have been adduced, based upon facts, militate strength in favor of the justice thereof.

In 1862 the subject was discussed by Governor Downey in his annual message, in which he says, after summing up the total amount of this indebtedness—making it \$218,468 54: "These bonds mature in 1862; the faith of the State is pledged to their payment, and if Congress will not assume this debt, as it properly should, the State should make provisions for its liquidation"—which part of the Governor's message was referred to a select committee of the Assembly, who, after a thorough examination of the subject, reported a bill similar to the one which your committee have considered and recommended its passage. Said special committee consisted of the present Lieutenant-Governor of the State, the present Attorney-General, and Messrs. Hillyer, Morrison, and Worthington.

The holders of these bonds and coupons claim that they were entitled to the money therefor when the same became due, but, owing to the embarrassed condition of the finances of the State, they have been and now are willing to accept bonds of the State therefor, as provided in the bill referred to your committee.

Your committee is of the opinion that the settlement of these claims with the holders cannot longer be delayed without great injury to the credit and a serious violation of the faith of the State, which has been unconditionally and unqualifiedly pledged for their redemption.

Therefore they report back the bill and recommend its passage.

This report is signed by John P. Jones, W. E. Lovett, and George S. Evans—the latter gentleman being an honored Senator of the now sitting Legislature.

A minority report was also submitted, which recommended the payment of the bonds, but disagreed with the majority report as to the payment of the coupons.

This report speaks of "notorious frauds committed in the issue of these bonds," and yet the gentlemen who sign it recommend the payment of the bonds, but would refuse payment of the coupons.

It seems to your committee that to be consistent they should have reported against the bonds, as they did against the coupons. But really, this question of fraud could only be considered when the bonds were in process of issue, and not after they had been put into circulation and had passed through many hands. Under such circumstances, a negotiable instrument is conclusively presumed to have passed for a valuable consideration and to be free from fraud. But if any fraud was ever perpetrated, your committee have failed to find evidence of it in the official reports.

As this minority report speaks of the failure of the Congressional appropriation to pay the detached coupons, your committee deem it well to give the true history of this matter, as it is given by Adjutant-General Kibbe, who was himself an actor in the scene. The following extract is taken from his report, attention to which report has already been directed:

I had the honor of presenting this whole matter to the Committee on Military Affairs of the United States Senate, while in Washington last year, explaining the same to them; in

which explanation I satisfied the committee that Congress had virtually assumed this portion of the debt (the interest), by Act of August, 1856, and that committee reported, as an amendment to the Army Appropriation Bill, the following, viz.:

"For the payment of the coupons outstanding and now unpaid accruing between the first day of January, 1854, and the sixteenth day of August, 1856, upon the bonds of the State of California, issued for the payment of expenses incurred in the suppression of Indian hostilities prior to the first day of January, 1854, the redemption of which bonds was authorized by Acts of Congress of August 5, 1854, August 18, 1856, and June 23, 1860, \$177,196 23; said coupons to be certified by the Third Auditor of the Treasury to be those designated by this section to be paid by the Secretary of War to the holders thereof."

But it being asserted by Senators that many of these coupons had been purchased for a nominal sum, and were mainly held by a banking house in Washington, the amendment did not prevail.

Whether this assertion of Senators was true or not, and your committee doubt if it was, the fact remains that these detached coupons successfully withstood the scrutiny of a Congressional committee, and were defeated because of statements very probably made at random. But admitting the statement to have been true, it does not relieve the State, as your committee think, from her obligation to pay. It would certainly be a new doctrine to hold that a debtor should be relieved from his indebtedness because his obligations went begging in the market. Under such circumstances your committee think that the debtor should make all the more effort to satisfy the demands of his creditors.

The bill again failed, and the coupons and certificates were not presented again until the year 1871, when they were laid before the Board of Examiners, under the provisions of the Act which provided for their consideration of claims not otherwise provided for by law. The Board of Examiners recommended that some competent person be appointed whose business it should be to investigate the whole matter of Indian war bonds and coupons and report to the Governor within ninety days, the Board to use the report as a basis of audit. This recommendation, however, was not concurred in by the Legislature.

The amount of coupons and certificates laid before the Board is as follows:

Coupons and certificates, by voucher .....	\$42,706 88
Coupons and certificates, by schedule .....	34,708 55
Total .....	\$77,415 43

#### REASONS FOR PAYING THE CLAIMS.

The claimants give the following reasons, among others, for urging the payment of these claims, and taken in connection with what has gone before, your committee deem them conclusive:

That the bondholders had good reason to believe when they surrendered their bonds that Congress would make an appropriation to pay the coupons, and not having done so, the State is bound by virtue of her contract with those who took her bonds.

That the principal not having been paid until September 1, 1856, the bondholders were clearly entitled to interest up to that time; instead of that they were only paid up to January 1, 1854, and this not by virtue of any composition on their part, but because of the rigid rule laid down by the War Department in its construction of the Acts of Congress of 1854 and 1856.

That the bonds of 1851 and 1852 were as valid and as negotiable as any bonds could be, for they were issued upon the faith and credit of the State.

That there was no fraudulent collusion of the bondholders and Commissioners, for the State authorities recognized the conduct of the latter as having been wise and honest.

That had the bondholders not surrendered their bonds the State would have been bound to pay not only the interest between January, 1854, and September, 1856, but the whole interest to maturity, which latter was saved, and amounted to more than \$300,000.

That the bondholders did not waive nor have they ever waived the interest between January, 1854, and September, 1856; nor did they yield up this interest in the way of satisfaction; that is, they did not agree to take nor had they any intention of taking the principal of their debt with interest up to January 1, 1854, in satisfaction of their whole debt; that the fact of their coupons having been surrendered to them proves this beyond the possibility of a doubt.

That the last Legislature paid some of the old issue of the bonds of 1852, with interest in full, and that this, as a precedent, should have great weight, from the fact, that by the surrender in 1856, over \$300,000 in interest was saved the State; and that it would be gross injustice to pay those parties in full whose refusal to surrender their bonds in 1856 cost the State increased interest, while depriving others of the interest which their principal indubitably earned, and by whose course the State was saved a very large amount.

That it is idle to say the bonds were fraudulently or improvidently issued, as such instruments after having been put in circulation cannot be affected by such considerations; that granting that the coupons have passed from hand to hand for insufficient consideration (of which there is no proof); this is not to be wondered at when the State has so persistently postponed their liquidation; and that if such is the case, it would not be the only instance in life in which necessity or deferred hope has caused the owner to part with a thing of value for an insufficient consideration; but that some of the bondholders have not parted with their coupons, and still retain them.

That the agent always binds his principal when acting within the scope of his authority; that the Commissioners, acting within the scope of their authority, returned to the bondholders these detached coupons stamped with their stamp, and for others gave certificates of indebtedness; that by so doing they acknowledged these instruments as being an unliquidated and valid demand against the State, and that by such acknowledgment the State (their principal) is bound.

That the State authorities knew of the course the Commissioners were pursuing, and could have repudiated their action; instead of that, they not only assented to it at the time, but applauded the conduct of the Commissioners afterwards; that this is conclusive of the objection that the Commissioners did not adhere to the very letter of their instructions, for it is well settled that when the principal assents to or subsequently confirms the action of his agent the principal is bound.

That the Commissioners deviated from the strict letter of their instructions in but two particulars; first, in not paying interest up to the time of presentation of the bonds; and secondly, in not advertising for bids for surrender of bonds. That as to the first, they were precluded from allowing interest up to the time of presentation, on account of the ruling of the War Department; and that as to the second, it would have been a useless expense to advertise for bids, for as the appropriation was more than sufficient to pay the bonds, with interest, up to January 1, 1854, every holder would have put in a bid at par. It follows, therefore, that the agent was forced to deviate somewhat from the letter, in order that he might preserve

the spirit of his instructions, and that he did so with the knowledge and consent of his principal.

That the Governor is bound to see the laws faithfully executed, and if he saw the Commissioners acting in derogation of the statute defining their duties he could have repudiated their action or removed them, but that the Commissioners were not only sustained by the Governor, but applauded by him (see Governor Johnson's message of 1857, above referred to).

That the acts of the Commissioners were not only ratified by the Governor, but by the Legislature, as will be seen by the statute empowering the Board of War Debt Commissioners to adjust with the General Government the war indebtedness of 1857 (Statutes of 1861, page 298); that it will be seen on referring to the first section of this Act that the Legislature acted upon the assumption that the Board were still in existence, and that it is plain that by laying upon the Commissioners further duties of the same kind previously performed, with full knowledge of the manner in which the trust was executed, that the Legislature thereby ratify the previous action of the agent of the State in the execution of such trust.

That the bonds and coupons were issued by the State with the express promise on her part to pay them if the United States Government did not, and that the later having made default the former is bound.

That every Governor who has spoken officially, and every committee to whom the claims have been referred (most of them unanimously, and only one in one instance evenly dividing), have urged their liquidation.

That the justice and validity of these claims have been acknowledged by the Legislature of this State, as will be seen by the following concurrent resolution (Statutes of 1859, page 381):

*Resolved by the Senate, the Assembly concurring.* That our Senators at Washington be instructed and our Representatives in Congress be requested to urge upon Congress the immediate payment of the Indian war debt due to citizens of this State.

*Resolved.* That a copy of these resolutions be forwarded by his Excellency, the Governor, to each of our Senators and Representatives, with as little delay as possible.

That it follows, as an irresistible conclusion, that to refuse payment of these claims is to repudiate a portion of the State debt.

#### AMOUNT OF INDEBTEDNESS OUTSTANDING.

As to the amount of indebtedness outstanding, your committee are enabled to give exact official information. From an examination of the bond register of the bonds of 1851 and 1852, in the office of the Treasurer of State, it appears that bonds were issued as follows:

Bonds of 1851.....	\$200,000 00
Bonds of 1852.....	636,350 00

By the officially certified lists from the office of the Third Auditor at Washington, received within the past few weeks, it appears that the General Government has paid the principal of bonds as follows:

Bonds of 1851.....	\$197,000
Bonds of 1852.....	598,450

We are enabled, therefore, to construct the following tables:

Issue of 1851.....	\$200,000
Paid by General Government of principal.....	197,000
Outstanding of principal.....	\$3,000

Issue of 1852.....	\$636,350
Paid by General Government of principal.....	\$598,450
Paid by State, 1865-66, of principal.....	20,950
Paid by State, 1867-68, of principal.....	900
Paid by State, 1869-70, of principal.....	1,350
	\$621,650

Outstanding of principal.....	\$14,700
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The following is an exhibit of the bonds that were laid before the Board of Examiners. We have tabulated them so that they can be easily understood and readily referred to:

No. of Bond.	Name of Claimant.	When Issued.	Principal.	Interest to May 2, 1862.	Total Principal and Interest.
305	E. W. Morse.....	Jan. 19, 1854.....	\$100	\$57 96	-----
306	E. W. Morse.....	Jan. 19, 1854.....	100	57 96	\$315 92
113	Samuel Scott.....	Feb. 3, 1854.....	250	143 18	393 18
347	I. Wormser.....	Apr. 15, 1854.....	100	56 30	-----
348	I. Wormser.....	Apr. 17, 1854.....	100	56 30	-----
349	I. Wormser.....	Apr. 17, 1854.....	100	56 30	468 90
340	M. S. Latham.....	Sept. 20, 1854.....	100	53 29½	-----
396	M. S. Latham.....	Aug. 26, 1854.....	100	53 76½	-----
374	M. S. Latham.....	May 13, 1854.....	100	55 76½	-----
373	M. S. Latham.....	May 13, 1854.....	100	55 76½	-----
372	M. S. Latham.....	May 13, 1854.....	100	55 76½	-----
141	M. S. Latham.....	Aug. 26, 1854.....	250	134 40½	-----
143	M. S. Latham.....	Aug. 26, 1854.....	250	134 40½	-----
142	M. S. Latham.....	Aug. 26, 1854.....	250	134 40½	-----
146	M. S. Latham.....	Sept. 14, 1854.....	250	133 53½	-----
416	M. S. Latham.....	May 13, 1854.....	500	278 82½	-----
145	M. S. Latham.....	Sept. 14, 1854.....	250	133 53½	3,473 43
128	Jay Cooke & Co.....	July 15, 1854.....	250	136 40	-----
129	Jay Cooke & Co.....	July 21, 1854.....	250	136 10	-----
130	Jay Cooke & Co.....	July 21, 1854.....	250	136 10	-----
134*	Jay Cooke & Co.....	July 21, 1854.....	250	93 38	-----
135	Jay Cooke & Co.....	July 21, 1854.....	250	136 10	-----
136	Jay Cooke & Co.....	July 21, 1854.....	250	136 10	-----
151	Jay Cooke & Co.....	Oct. 18, 1854.....	250	131 38	-----
329	Jay Cooke & Co.....	Mar. 29, 1854.....	100	56 63	-----
331	Jay Cooke & Co.....	Mar. 31, 1854.....	100	56 60	-----
332	Jay Cooke & Co.....	Mar. 31, 1854.....	100	56 60	-----
333	Jay Cooke & Co.....	Mar. 31, 1854.....	100	56 60	-----
340	Jay Cooke & Co.....	Apr. 12, 1854.....	100	56 36	-----
341	Jay Cooke & Co.....	Apr. 12, 1854.....	100	56 36	-----
353	Jay Cooke & Co.....	Apr. 25, 1854.....	100	56 11	-----
354	Jay Cooke & Co.....	Apr. 25, 1854.....	100	56 11	-----
355	Jay Cooke & Co.....	Apr. 25, 1854.....	100	56 11	-----
371	Jay Cooke & Co.....	May 8, 1854.....	100	55 86	-----
383	Jay Cooke & Co.....	June 6, 1854.....	100	55 31	-----
384	Jay Cooke & Co.....	July 15, 1854.....	100	54 55	-----
386	Jay Cooke & Co.....	July 21, 1854.....	100	54 44	-----
390	Jay Cooke & Co.....	Aug. 7, 1854.....	100	54 13	-----
391	Jay Cooke & Co.....	Aug. 11, 1854.....	100	54 05	-----
394	Jay Cooke & Co.....	Aug. 19, 1854.....	100	53 91	-----
420	Jay Cooke & Co.....	July 15, 1854.....	500	272 80	-----
433	Jay Cooke & Co.....	June 21, 1856.....	100	41 02	6,059 11
Total principal and interest up to May 2, 1862, when bonds matured.....					\$10,710 54

\* Some coupons lost from this bond.

The total principal is thus seen to be \$6,950, and the total interest up to May 2, 1862 (the date of the maturity of the bonds), \$3,760 54. We have made a careful comparison of these bonds with the numbers of those paid at Washington and by the State, and are satisfied that none of them have ever been paid, with the exception of Bond No. 347, issued April 15, 1854.

By reference to the official list in Appendix, it will be seen that the General Government has redeemed a bond of that number and denomination. We do not know of any duplicate having been authorized by statute for this bond, nor does the register give more than the one number. In fact, the bond here corresponds exactly with that set out in the bond register. Both are for the same number and denomination, and both purport to have been issued to D. B. Kurtz, on the fifteenth of April, 1854. The question arises, how did this bond get here? Setting aside the improbability of any one counterfeiting the bond and all of its indorsements, including that of Kurtz, and the fact of its never having been in the office of the Third Auditor—for it lacks the indorsement of the War Debt Commissioners—we are driven to the supposition that the number three hundred and forty-seven in the official list is a clerical error. At all events the bond is here, and bears every evidence of genuineness.

Our examination of Bond No. 433, for \$100, disclosed the following singular state of facts: It appears that two bonds of \$100 each, numbered 432 and 433, were issued to A. W. Bee by Act of the Legislature approved May 14, 1862 (page 554 of Statutes), in lieu of Bonds Nos. 344 and 345 that had been issued November 24, 1854, and that there is no record of any bond for \$100 numbered 433 having been issued on June 21, 1856. Of course, this bond could not be one of those issued to Bee, because his bonds were issued in 1862, and were to bear the same date, by the terms of the statute, as those bonds which he was to surrender, viz.: November 24, 1854. The suspicion attached to this bond is not relieved by the fact of its lacking the seal of the Treasurer, which its fellows exhibit; but as the genuineness of the bond will have to be passed upon in the process of funding, we deem it unnecessary to discuss the matter further.

If payment were made of the bonds above tabulated, there would still be outstanding of the bonds of 1851, \$3,000, being three bonds numbered 107, 108, and 142, and of the bonds of 1852, \$7,750. As one half of these latter (\$3,800) belong to the old issue of 1852, and were not presented to the War Debt Commissioners, and as but \$1,350 of these have ever been presented to the Legislature, and none of them were laid before the Board of Examiners, it is but fair to presume that nearly half of the bonds of 1852, still outstanding, will never be brought forward for payment.

Deeming the following table may be of some service, we have taken the pains to construct it, premising that the "old issue" of 1852, comprises those bonds that were issued prior to January 1, 1854, and the "new issue," the bonds that were issued after that time:

Old issue of 1852 .....	\$595,950 00
Paid by Government of principal .....	\$590,800 00
Paid by State, 1868-70, of principal .....	1,350 00
	<u>\$592,150 00</u>
Outstanding .....	<u>\$3,800 00</u>
New issue of 1852 .....	\$40,400 00
Paid by Government of principal .....	\$7,650 00
Paid by State, 1865-66, of principal .....	20,950 00
Paid by State, 1867-68, of principal .....	900 00
	<u>\$29,500 00</u>
Outstanding .....	<u>\$10,900 00</u>

The amount of the detached coupons is given by the Commissioners at \$172,828 54, and by Adjutant-General Kibbe at \$127,196 23. How General Kibbe arrives at these latter figures he does not tell us, nor do we deem it material to ascertain, even if we could do so. The Commissioners' figures

are adhered to in all of the official reports; and besides, as many years have elapsed since the coupons were detached, your committee doubt if more than three fourths of them could be presented in shape for payment.

The whole indebtedness may be tabulated as follows:

Bonds of 1851, of principal .....	\$3,000 00
Bonds of 1852 (new issue), of principal .....	10,900 00
Bonds of 1852 (old issue), of principal .....	3,800 00
Detached coupons and certificates of indebtedness .....	172,828 54
Total .....	<u>\$190,528 54</u>

This amount will, of course, be somewhat greater when there is added to it the interest on the bonds to their maturity, but for reasons heretofore given we are convinced that many of the evidences of indebtedness will never be presented, and that the sum of \$190,000 is considerably more than the State will ever be called upon to pay.

The Redemption Registers in the Treasurer's office we found to be as incomplete as they are stated to be by the Board of Examiners, but it will be an easy matter, by means of the official lists above referred to, to correct and complete them. The want of that information which these lists furnish seems to have been the motive that determined the conclusion of the Board of Examiners, it being deemed that this information could only be procured on the personal application of an agent of the State. After this determination, however, some of the claimants succeeded, after a delay of some months, in obtaining those official lists of which we have made such good use, and which we beg leave to append to this report as an appendix.

#### RECOMMENDATION.

The committee would therefore recommend in conclusion that the whole indebtedness be funded, the Funding Act to provide for the issue of bonds of the State to the amount of \$190,000, with interest at the rate of seven per cent per annum. A tax of three fourths of a cent on each \$100 will be amply sufficient for the purpose; indeed, this rate will doubtless prove to be too high in the course of a few years.

Thus, for an insignificant tax, would the State be finally relieved of an obligatory indebtedness that has vexed her for years, and her people receive yet another illustration of that nice sense of right which is no less necessary to the honor of a commonwealth than it is to that of an individual.

GEORGE C. PERKINS,  
JOHN McMURRY,  
WILLIAM MINIS,  
HENRY LARKIN,  
STEPHEN WING,  
Senate Committee.

E. B. MOTT, JR.,  
JACOB WELTY,  
W. N. DE HAVEN,  
ROBERT BELL,  
J. H. COOPER,  
P. B. BACON,  
W. A. ALDRICH,  
Assembly Committee.

## APPENDIX.

## LIST

*Of the California twelve per cent War Bonds paid by the United States under the Smith and Denver Commission, said Bonds being for the amount of One Thousand Dollars (\$1,000) each, and with interest upon the Coupons up to the first day of January, 1854.*

Number and Date of Bond.		Number and Date of Bond.		Number and Date of Bond.		Number and Date of Bond.	
1	April 1, 1851.	51	April 1, 1851.	122	April 21, 1851.	172	June 10, 1851.
2	April 1, 1851.	52	April 1, 1851.	123	April 21, 1851.	173	June 10, 1851.
3	April 1, 1851.	53	April 1, 1851.	124	April 21, 1851.	174	June 10, 1851.
4	April 1, 1851.	54	April 1, 1851.	125	April 21, 1851.	175	June 10, 1851.
5	April 1, 1851.	55	April 1, 1851.	126	April 21, 1851.	176	July 25, 1851.
6	April 1, 1851.	56	April 1, 1851.	127	April 21, 1851.	177	July 25, 1851.
7	April 1, 1851.	57	April 1, 1851.	128	April 21, 1851.	178	July 25, 1851.
8	April 1, 1851.	58	April 1, 1851.	129	April 21, 1851.	179	July 25, 1851.
9	April 1, 1851.	59	April 1, 1851.	130	April 21, 1851.	180	July 25, 1851.
10	April 1, 1851.	60	April 1, 1851.	131	May 24, 1851.	181	July 25, 1851.
11	April 1, 1851.	61	April 1, 1851.	132	May 24, 1851.	182	July 25, 1851.
12	April 1, 1851.	62	April 1, 1851.	133	May 24, 1851.	183	July 25, 1851.
13	April 1, 1851.	63	April 1, 1851.	134	May 24, 1851.	184	July 25, 1851.
14	April 1, 1851.	64	April 1, 1851.	135	May 24, 1851.	185	July 25, 1851.
15	April 1, 1851.	65	April 1, 1851.	136	May 24, 1851.	186	July 25, 1851.
16	April 1, 1851.	66	April 1, 1851.	137	May 24, 1851.	187	July 25, 1851.
17	April 1, 1851.	*67	April 1, 1851.	138	May 24, 1851.	188	July 25, 1851.
18	April 1, 1851.	68	April 1, 1851.	139	May 24, 1851.	189	July 25, 1851.
19	April 1, 1851.	69	April 1, 1851.	140	May 24, 1851.	190	July 25, 1851.
20	April 1, 1851.	70	April 1, 1851.	141	May 24, 1851.	191	July 25, 1851.
21	April 1, 1851.	71	April 1, 1851.	143	May 24, 1851.	192	July 25, 1851.
22	April 1, 1851.	72	April 1, 1851.	144	May 24, 1851.	193	July 25, 1851.
23	April 1, 1851.	73	April 1, 1851.	145	May 24, 1851.	194	July 25, 1851.
24	April 1, 1851.	*74	April 1, 1851.	146	May 24, 1851.	195	July 25, 1851.
25	April 1, 1851.	75	April 1, 1851.	147	May 24, 1851.	196	July 25, 1851.
26	April 1, 1851.	76	April 1, 1851.	148	May 24, 1851.	197	July 25, 1851.
27	April 1, 1851.	77	April 1, 1851.	149	May 24, 1851.	198	July 25, 1851.
28	April 1, 1851.	78	April 1, 1851.	150	May 24, 1851.	199	July 25, 1851.
29	April 1, 1851.	79	April 1, 1851.	151	June 10, 1851.	226	July 25, 1851.
30	April 1, 1851.	80	April 1, 1851.	152	June 10, 1851.	227	July 25, 1851.
31	April 1, 1851.	101	April 9, 1851.	153	June 10, 1851.	228	July 25, 1851.
32	April 1, 1851.	102	April 9, 1851.	154	June 10, 1851.	229	July 25, 1851.
33	April 1, 1851.	103	April 9, 1851.	155	June 10, 1851.	230	July 25, 1851.
*34	April 1, 1851.	104	April 9, 1851.	156	June 10, 1851.	231	July 25, 1851.
35	April 1, 1851.	105	April 9, 1851.	157	June 10, 1851.	232	July 25, 1851.
36	April 1, 1851.	106	April 9, 1851.	158	June 10, 1851.	233	July 25, 1851.
37	April 1, 1851.	109	April 9, 1851.	159	June 10, 1851.	234	July 25, 1851.
38	April 1, 1851.	110	April 9, 1851.	160	June 10, 1851.	235	July 25, 1851.
39	April 1, 1851.	111	April 9, 1851.	161	June 10, 1851.	236	July 25, 1851.
40	April 1, 1851.	112	April 9, 1851.	162	June 10, 1851.	237	July 25, 1851.
41	April 1, 1851.	113	April 9, 1851.	163	June 10, 1851.	238	July 25, 1851.
*42	April 1, 1851.	114	April 9, 1851.	164	June 10, 1851.	239	July 25, 1851.
43	April 1, 1851.	115	April 9, 1851.	165	June 10, 1851.	240	July 25, 1851.
44	April 1, 1851.	116	April 9, 1851.	166	June 10, 1851.	241	July 25, 1851.
45	April 1, 1851.	117	April 9, 1851.	167	June 10, 1851.	242	July 25, 1851.
46	April 1, 1851.	118	April 9, 1851.	168	June 10, 1851.	243	July 25, 1851.
47	April 1, 1851.	119	April 9, 1851.	169	June 10, 1851.	244	July 25, 1851.
48	April 1, 1851.	120	April 11, 1851.	170	June 10, 1851.	245	July 25, 1851.
49	April 1, 1851.	121	April 21, 1851.	171	June 10, 1851.	268	April 8, 1852.
50	April 1, 1851.						

\* These so noted were paid as duplicates in lieu of the original bonds.

Third Auditor's Office, December 21, 1871.

A true list.

VANDOREN, Clerk.

## LIST OF SEVEN PER CENT CALIFORNIA WAR BONDS PAID BY THE UNITED STATES.

*First*—Bonds with interest upon the coupons up to the first of January, 1854:

One thousand dollar bonds, numbers one to three hundred and forty-one, inclusive.

Five hundred dollar bonds, numbers one to ninety, inclusive.

Five hundred dollar bonds, numbers ninety-two to one hundred and eighty-five, inclusive.

Five hundred dollar bonds, numbers one hundred and eighty-seven to three hundred and six, inclusive.

Five hundred dollar bonds, numbers three hundred and eight to three hundred and ninety-nine, inclusive.

Two hundred and fifty dollar bonds, numbers one to sixty-eight, inclusive.

Two hundred and fifty dollar bonds, numbers seventy to one hundred and five, inclusive.

One hundred dollar bonds, numbers one to one hundred and fourteen, inclusive.

One hundred dollar bonds, numbers one hundred and sixteen to one hundred and thirty-one, inclusive.

One hundred dollar bonds, numbers one hundred and sixty-four to two hundred and eighteen, inclusive.

One hundred dollar bonds, numbers two hundred and twenty to two hundred and sixty-seven, inclusive.

One hundred dollar bonds, numbers two hundred and seventy-two to two hundred and ninety-six, inclusive.

*Second*—Bonds bearing date subsequent to the first day of January, 1854, with coupons paid to the first day of July, 1860.

Five hundred dollar bonds, numbers four hundred and three, four hundred and nine, four hundred and ten, four hundred and eleven, and four hundred and thirteen.

Two hundred and fifty dollar bonds, numbers one hundred and eight, one hundred and nine, one hundred and ten, one hundred and twenty-one, and one hundred and twenty-two.

Two hundred and fifty dollar bonds, numbers one hundred and twenty-three, one hundred and twenty-four, one hundred and twenty-five, one hundred and twenty-six, one hundred and forty, and one hundred and forty-nine.

One hundred dollar bonds, numbers three hundred and two, three hundred and twenty-four, three hundred and twenty-five, three hundred and twenty-six, three hundred and thirty-four, three hundred and thirty-five, three hundred and thirty-six, three hundred and thirty-seven, three hundred and thirty-eight, three hundred and thirty-nine, three hundred and forty-two, three hundred and forty-three, three hundred and forty-four, three hundred and forty-five, three hundred and forty-six, three hundred and forty-seven, three hundred and fifty, three hundred and fifty-seven, three hundred and fifty-eight, three hundred and fifty-nine, three hundred and sixty-six, three hundred and seventy, three hundred and seventy-five, and three hundred and seventy-six.

A true list.

WM. THEO. VANDOREN, Clerk.

THIRD AUDITOR'S OFFICE, January 10, 1872.

[Extract from Report of Adjutant-General Geo. B. Cosby.]

I desire to invite your attention to the fact that much time and labor has been devoted in this office during the last two years to hunting up the various reports, vouchers, etc., pertaining to war claims of California, against the United States, arising from the various Indian wars within, and upon the borders of this State, also during the late civil war. The papers relating especially to the Indian wars have been laying in the State offices for more than thirty years. There can be no doubt that the money actually expended by California in these wars constitutes a just claim against the United States, yet for many years all efforts and hope seemed to have been abandoned, and the documents referred to regarded as scarcely more valuable than waste paper. A large amount of time and arduous labor has been devoted to preparing these claims for presentation to the proper authorities at Washington City by Captain John Mullan, State Agent and Counsel, acting therein under his contract with the State. There now seems to be a favorable prospect of securing from the United States for the State of California, a recognition and payment of these several claims. The details concerning their character and amounts, and the steps taken to secure payment are set forth in an elaborate report thereon, made by him to your Excellency on the first of November, 1886, and to which I ask especial attention. In view of the matter therein contained, I now respectfully recommend that the proceeds arising from these claims, after payment shall have been made of all outstanding valid indebtedness for which such proceeds have been heretofore dedicated, by law, may be reserved as a special military fund, and to be used exclusively for such legitimate wants as pertain to the permanent and efficient maintenance of the National Guard and of the soldiers' home for the disabled veterans of the volunteers from this State. The persistent labor and intelligent efforts of Captain Mullan in behalf of these claims deserve great consideration.

### EXHIBIT No. 3.

#### JOINT RESOLUTION IN RELATION TO THE WAR DEBT.

[Approved March 1, 1853.]

*Resolved by the Senate and Assembly,* That the Board of Examiners of the accounts and vouchers for expenses incurred by this State for the suppression of Indian hostilities, are hereby directed to make out and present to the Legislature a statement of said accounts, together with all the correspondence and circumstances relating to the origin, prosecution, and conclusion of the Indian wars in this State, prosecuted by authority of the same; and generally such information as may be proper to be submitted to the Congress of the United States, in order that the debt thus assumed by this State, and the bonds issued thereupon, may be provided for by the General Government, in such manner and with such promptitude as is demanded by the merits of the claim and the right of protection in such cases.

(Laws of California 1853, page 310.)

#### 14. RESOLUTION RELATIVE TO BALANCE OF WAR DEBT.

*Resolved by the Senate, the Assembly concurring,* That our Senators in Congress are hereby instructed, and our Representatives be requested, to use their exertions to obtain from the Government of the United States an appropriation of two hundred thousand six hundred and seventy-five dollars and eighty-eight cents, the surplus of our war indebtedness, over and above the amount heretofore appropriated by Congress for that purpose, to be applied toward the liquidation of the balance of the war debt of this State, incurred in the suppression of Indian hostilities within our borders.

*Resolved,* That his Excellency the Governor be and he is hereby required to transmit a copy of this resolution to our Senators and Representatives in Congress at an early day.

(Statutes of California 1856, page 243.)

#### NO. XXV.

*Concurrent resolution relative to the passage of a law, by Congress, making appropriation for the payment of bonds authorized to be issued for the payment of Indian hostilities.*

[Passed April 17, 1858.]

*Resolved by the Assembly of the State of California, the Senate concurring,* That our Senators be instructed, and our Representatives in Congress requested, to use their influence to procure the passage of a law making an appropriation sufficient for the payment of the bonds authorized to be issued, by this State, for the suppression of Indian hostilities within her bounds, for the payment of which no provision has been made, and of the expenses incident thereto.

*Resolved,* That the Governor of this State be and he is hereby requested to furnish our Senators and Representatives in Congress with a statement of the amount of such bonds authorized to be issued under any law of this State, and the incidental expenses connected therewith, and, also, copies of these resolutions.

(Statutes of California 1858, page 358.)

#### CONCURRENT RESOLUTION NO. 1.

[Passed January 11, 1859.]

*Resolved by the Senate, the Assembly concurring,* That our Senators at Washington be instructed, and our Representatives in Congress be requested, to urge upon Congress the immediate payment of the Indian war debt due to citizens of this State.

*Resolved,* That a copy of these resolutions be forwarded by his Excellency, the Governor, to each of our Senators and Representatives, with as little delay as possible.

(Statutes of California 1859, page 381.)

STATE OF CALIFORNIA, DEPARTMENT OF STATE.

I, Thomas L. Thompson, Secretary of State of the State of California, do hereby certify that I have carefully compared the annexed copy of Con-



current Resolution No. 1, passed by the Legislature of the State of California on January 11, 1859, with the original now on file in my office, and that the same is a correct transcript therefrom and of the whole thereof. Also, that this authentication is in due form and by the proper officer.

Witness my hand and the Great Seal of State, at office in Sacramento, California, the third day of January, A. D. 1885.

[SEAL.]

THOMAS L. THOMPSON,  
Secretary of State.

By A. E. SHATTUCK, Deputy.

#### NO. XXX—CONCURRENT RESOLUTION.

[Passed April 18, 1859.]

*Resolved by the Assembly, the Senate concurring,* That the Quartermaster and Adjutant-General of this State be and he is hereby requested to forward to the War Department at Washington, and to the Congress of the United States, on or before the first day of January next, all the original vouchers for claims for expenses incurred by the various wars and expeditions against the Indians of this State (now unpaid) up to the present date, whether held by the State of California or any citizen thereof, with a view of inducing immediate assumption of the same by the General Government.

(Statutes of California 1859, page 395.)

#### NO. XXXIV.—CONCURRENT RESOLUTION IN RELATION TO THE WAR DEBT.

[Passed April 10, 1860.]

*Resolved by the Senate, the Assembly concurring,* That his Excellency, the Governor, is hereby directed to have made out, in duplicate, a complete statement of the expenses incurred by citizens of this State in the suppression of Indian hostilities, which have been recognized by legislative action, and which have not been assumed and paid by the General Government; together with such of the correspondence and information relating to the origin, prosecution, and termination, of the several Indian wars, waged by authority of this State, as may be proper to submit to the Congress of the United States, in asking payment therefor; which statement, correspondence, and information, shall be presented to the next Legislature of this State, which is to meet on the first Monday in January, one thousand eight hundred and sixty-one.

(Statutes of California 1860, page 422.)

#### NO. XXXVI.—CONCURRENT RESOLUTION.

[Passed April 18, 1860.]

WHEREAS, A bill has been introduced in the House of Representatives, providing for the assumption of the Indian war debt of the State of California by the General Government; therefore, be it

*Resolved by the Senate, the Assembly concurring,* That his Excellency, the Governor of California, be requested to transmit at his earliest convenience, to our Members in Congress, the original vouchers upon which this debt is predicated, together with the record of the action thereon by the Board of Examiners of War Claims, whether the said claims are held by the State of California, or by citizens thereof.  
(Statutes of California 1860, page 423.)

#### NO. XXXIV.—CONCURRENT RESOLUTION.

[Adopted May 3, 1861.]

*Resolved by the Assembly, the Senate concurring,* That our Senators in Congress be instructed, and our Representatives requested, to procure, at as early a day as practicable, an appropriation to meet the expenses of the Volunteers under the command of Colonel John C. Hays, for services, and all claims justly chargeable to the Federal Government, in the late Indian war in Utah Territory.

(Statutes of California 1861, page 680.)

#### NO. XXXIX.—CONCURRENT RESOLUTION.

[Adopted February 8, 1862.]

WHEREAS, The citizens of this State, upon the Indian frontier, have been exposed to the depredations of hostile Indians since the settlement of California by the whites, and have suffered severe losses of property by tribes under the control of the Federal Government (and with whom treaties of peace have been made), such as the destruction of horses, buildings, bridges, ferries, and other property, and in having stock and other property of various descriptions stolen; therefore,

*Resolved by the Senate, the Assembly concurring,* That our Senators in Congress be instructed, and our Representatives be requested, to use their exertions to secure the passage of an Act by Congress directing the appointment, by the President of the United States, of a Commissioner, whose session shall be held at some convenient point or points in this State, and who shall be authorized and required to collect proof relative to the losses sustained by our citizens, as aforesaid, and report the same to the Secretary of the Interior, to be by him submitted to Congress.

*Resolved,* That his Excellency, the Governor, be requested, at an early day, to forward copies of the foregoing preamble and resolutions to our Senators and Representatives in Congress.

(Statutes of California 1862, page 611.)

#### NO. XIV.—CONCURRENT RESOLUTION.

[Adopted April 12, 1862.]

*Resolved by the Senate, the Assembly concurring,* That the Adjutant-General of this State is hereby instructed to forward to the Third Auditor of the Treasury Department of the United States, for settlement, all additional vouchers (original) representing claims for supplies furnished any of

the expeditions against the Indians of this State, for the payment of which Congress made an appropriation by Act of March second, eighteen hundred and sixty-one.

(Statutes of California 1862, page 604.)

#### NO. XIV—CONCURRENT RESOLUTION.

[Adopted March 5, 1863.]

WHEREAS, Many citizens of this State, in the years eighteen hundred and fifty-nine and eighteen hundred and sixty, were employed in the service of the United States by the agents of the Indian Department, and others furnished the agents of Government with supplies for the several Indian reservations in California, upon the assurance and belief that the accounts therefor would be speedily paid, which has not to the present time been done; and, whereas, there is now an unexpended balance in the Treasury of the United States of the appropriation for defraying the expenses of the Indian service in this State, and which is applicable to the accounts mentioned, and which has been withheld from the objects intended by the Congress making said appropriation; therefore, be it—

*Resolved by the Assembly, the Senate concurring,* That our Senators be instructed and our Representatives requested to urge on the proper authorities in Washington a prompt examination and settlement of the accounts aforesaid.

*Resolved,* That the Governor be requested to transmit a copy of the foregoing to each of our Senators and Representatives in Congress, to the Secretary of the Interior, and to the Commissioner of Indian Affairs.

(Statutes of California 1863, page 783.)

#### NO. XII—CONCURRENT RESOLUTIONS.

[Adopted February 6, 1864.]

WHEREAS, A devastating and relentless Indian war has been and is still being waged in certain counties in the northern portion of this State, the extent of which has never been fully known to the people in other portions of the State, nor properly considered by those whose duty it was to afford us protection at a time when a small force, judiciously managed, could have so disposed of those Indians as to have effectually prevented the present lamentable condition of the counties of Humboldt, Klamath, and Trinity; and, whereas, in the counties above named there are no less than fifteen hundred Indian warriors, many of whom are well armed with rifles, shot-guns, and revolvers, and as they are almost daily adding to their stock of arms and ammunition, by murdering defenseless miners, farmers, and traders, and are successfully encouraging a general uprising of Indians which the whites had hoped would remain quiet for the present, and as the people of the entire counties of Humboldt, Klamath, and Trinity are, to a great extent, at the mercy of the savages, the military force at present in that district being entirely inadequate for the protection of the citizens, and owing to the peculiar natural advantages which the Indians in that district possess over the whites, in the adaptation of that mountainous region for the prosecution of their cowardly mode of warfare, it becomes necessary to operate against them in the Winter season; and as they have already des-

troyed about one eighth of the taxable property of Humboldt County, and entirely depopulated large portions of Trinity and Klamath Counties, having murdered no less than seventy-five valuable citizens, and in some cases women and children in so doing; and, whereas, it is well known that the Indians are preparing for a war of extermination and extended operations in the Spring, which they will be able to carry on to a frightful extent if they are not checked immediately; therefore,

*Resolved by the Assembly, the Senate concurring,* That his Excellency, the Governor, be requested to use his best endeavors to have a sufficient number of troops sent to the scene of hostilities immediately as will give security to what few lives and little property that may be left, and if possible avert a more extended field of blood and rapine, which the savages are preparing for, and prevent, if possible, other counties, which are now considered out of danger, from being overrun by hostile savages.

*And be it further resolved,* That if the military commander of this division cannot furnish the requisite number of troops to restore this valuable portion of our State to the peaceable possession of the whites, and throw a proper safeguard around them for the future, then his Excellency is hereby requested to lay our grievances before the Secretary of War, through our Representatives in Congress, to the end that our now deplorable and imminently dangerous future may be properly cared for.

(Statutes of California, page 544.)

#### NO. XVIII—MEMORIAL CONCERNING THE PAYMENT OF DAMAGES BY THE UNITED STATES DONE BY INDIANS IN 1861, 1862, AND 1863, IN THE COUNTIES OF HUMBOLDT, TRINITY, KLAMATH, DEL NORTE, ETC.

[Adopted March 27, 1868.]

The Memorial of the Legislature of the State of California to the Congress of the United States of America respectfully represents:

That the United States Government has failed, in the years of our Lord eighteen hundred and sixty-one, eighteen hundred and sixty-two, eighteen hundred and sixty-three, and eighteen hundred and sixty-four, to protect the citizens of Humboldt, Klamath, Del Norte, and Trinity from the violence of the Indians of that quarter of the State, and that many lives were lost during the period named of some of the best citizens of the State, for which recompense is not possible.

It is further represented that during the time named a large amount of property was destroyed by these Indians. It is believed that the property so lost was of the value of one hundred and fifty thousand dollars.

This memorial respectfully asks that steps be authorized and taken by the General Government to ascertain the amount of property so destroyed in the period named, with the names of owners, date of destruction, and other proper information relative thereto, to the end that the parties in interest may be reimbursed.

The direct proof of what is here alleged can be easily afforded, but a difficulty is felt in having no tribunal or authority to take such proof.

(Statutes of California 1867-68, page 739.)

## CHAP. LIV—ASSEMBLY JOINT RESOLUTION No. 73.

[Adopted March 30, 1878.]

*Resolved by the Assembly of the State of California, the Senate concurring, First, that our Senators be instructed, and our Representatives requested, to urge upon Congress the immediate payment of all bonds, coupons, and certificates of coupons, issued by the State of California for expenses incurred in the Indian wars, which have not been paid by the General Government; Second, that his Excellency, the Governor, be requested to cause a statement of all such bonds, certificates, and coupons, and of the circumstances connected therewith, to be prepared by the Controller, and upon such statement being prepared, to cause an application to be made to Congress, in the name of the State of California, for the payment of said bonds, coupons, and certificates; Third, and that he forward a copy of these resolutions to each of our Senators and Representatives in Congress.*

(Statutes of California 1877-8, page 1083.)

## REPORT.

MR. PRESIDENT: The Committee on Claims, to whom was referred Senate Bill No. 59, "An Act entitled an Act to provide for paying certain demands issued on the faith and credit of the State, which became due and payable on the second day of May, A. D. 1862, and to contract a funded debt for that purpose," have had the same under consideration, and ask leave to report:

That they find there is now outstanding about \$220,000 of the old Indian war debt, evidenced by and consisting of war bonds and coupons, for the payment of which the faith and credit of the State has been pledged, as will fully appear by an Act passed May 2, 1852, and other Acts supplemental thereto, under which said bonds were issued.

That said bonds, by the terms of said Acts, became due and payable on the second day of May, 1862, and no provision has been made for the payment thereof. The holders of said bonds and coupons have applied to former Legislatures to provide some way for the settlement of the aforesaid indebtedness, and your committee have carefully examined the proceedings of the various committees to whom the matter has heretofore been referred, and have been unable to discover any well founded objection to any part of this claim; on the contrary, all the arguments which have been adduced, based upon facts, militate strength in favor of the justice thereof.

In 1862 the subject was discussed by Governor Downey in his annual message, in which he says, after summing up the total amount of this indebtedness—making it \$218,468 54: "These bonds mature in 1862; the faith of the State is pledged to their payment, and if Congress will not assume this debt, as it properly should, the State ought to make provisions for its liquidation"—which part of the Governor's message was referred to a select committee of the Assembly, who, after a thorough examination of the subject, reported a bill similar to the one which your committee have considered, and recommended its passage.

Said special committee consisted of the present Lieutenant-Governor of the State, the present Attorney-General, and Messrs. Hillyer, Morrison, and Worthington.

The holders of these bonds and coupons claim that they were entitled to

the money therefor when the same become due, but owing to the embarrassed condition of the finances of the State, they have been and now are willing to accept bonds of the State therefor, as provided in the bill referred to your committee.

Your committee is of the opinion that the settlement of these claims with the holders cannot longer be delayed without great injury to the credit and a serious violation of the faith of the State, which has been unconditionally and unqualifiedly pledged for their redemption.

Therefore they report back the bill and recommend its passage.

JOHN P. JONES, Chairman.  
GEORGE S. EVANS,  
W. E. LOVETT,  
Of the Committee.

## INDIAN WAR CLAIMS.

The Treasurer last year reported the amount allowed by the United States, and to be paid this State upon Indian war claims, to be two hundred and twenty-nine thousand nine hundred and eighty-seven dollars and sixty-seven cents (\$229,987 67); and the Treasurer, at the same time, reported the contract with Wells, Fargo & Co. for bringing that sum of money to California, and he advised the Governor and the Legislature, that in case the United States should pay in legal tender notes, insurance upon the same during their transmission from New York would be necessary.

The United States having paid in notes, it was agreed that Wells, Fargo & Co. should have and might make a claim against the State for such amount as they paid for insurance.

Wells, Fargo & Co. have received.....	\$229,987 67
And charged for services.....	\$2,299 87
For insurance, four per cent.....	9,198 51
	<u>\$11,498 38</u>
Leaving a balance of.....	\$218,489 29

This amount was paid to the State in notes, while Wells, Fargo & Co. retain the amount of their charge, eleven thousand four hundred and ninety-eight dollars and thirty-eight cents (\$11,498 38), subject to final settlement with the State.

War bonds and certificates have been presented for payment, to date, to the amount of one hundred and ninety-two thousand two hundred and eighty-eight dollars and fifty cents (\$192,288 50), which have been surrendered for the sum of one hundred and two thousand one hundred and sixty-six dollars and sixty-two cents (\$102,166 62), being the amount allowed by the United States thereon, less the five per cent deducted under the Act of the Legislature of April ninth, eighteen hundred and sixty-two.

Paid to claimants.....	\$102,166 62
Five per cent retained.....	5,377 54
Balance in fund for redemption of bonds and certificates, exclusive of said five per cent.....	<u>45,905 26</u>

Against the retaining said five per cent many of the claimants have protested on the ground that the State had no right to reduce the amount allowed them by the United States, or to subject any portion of it to the use of the State. The validity of this reason seems hardly open to question, but the law has been complied with, and the five per cent retained.

The smallness of the exaction from each of the claimants may induce them in the main to avoid the expenses of prosecuting the matter; still the subject should receive the attention of the Legislature, as it hardly befits the State to exact the five per cent, when the bond guarantees to the holder whatever may be allowed by the United States.

The war debt of the State may now be summed up as follows:

Old war debt, as per statement included in report (see Exhibit O).....	\$218,468 54
Amount of bonds issued under the Act of 1857.....	354,475 19
Certificates and audited accounts not bonded.....	75,000 00
Cash paid by California.....	156,207 85
	<hr/>
	\$804,151 58
The net amount received into the State Treasury from the United States Government, \$218,149 67 will extinguish.....	426,866 89
	<hr/>
Making the total Indian war debt.....	\$377,284 69

Of this amount only two hundred and eighteen thousand four hundred and sixty-eight dollars and fifty-four cents (\$218,468 54), is properly chargeable as State debt.

There have been so many references, by the Governor and other State officers of California in the various State papers, to the various phases of these California war claims, that I can only refer to them generally, and hence among other record refer to them as follows, to wit:

- Page 12, *et seq.*, Senate Journal (fourth session), 1853.
- Pages 13, 39, and 459, Senate Journal (fifth session), 1854.
- Pages 62 to 69, 331 to 333, and 371, Senate Journal (sixth session), 1855.
- Pages 25, 361, 407, and 597, Assembly Journal (sixth session), 1855.
- Pages 27, and 226 to 232, Senate Journal (seventh session), 1856.
- Page 384, Assembly Journal (seventh session), 1856.
- Pages 29, 36, and 37, Senate Journal (eighth session), 1857.
- Pages 63, 69, 302, 303, 314, and 467, Senate Journal (ninth session), 1858.
- Page 43, Assembly Journal (tenth session), 1859.
- Pages 35 and 665, Senate Journal (tenth session), 1859.
- Page 406, Senate Journal (eleventh session), 1860.
- Page 594, Senate Journal (twelfth session), 1861.
- Pages 23 to 27, and 34, Senate Journal (thirteenth session), 1862.
- Page 32, Senate Journal (fourteenth session), 1863.
- Page 37, Assembly Journal (seventeenth session), 1867-1868.

#### EXHIBIT No. 4.

Forty-seventh Congress, first session. S. R. 10.

In the Senate of the United States. December 12, 1881.

Mr. Grover asked and by unanimous consent obtained leave to bring in the following joint resolution; which was read twice and referred to the Committee on Military Affairs:

#### JOINT RESOLUTION

*To authorize the Secretary of War to ascertain and report to Congress the amount of money expended and indebtedness assumed by the State of Oregon in repelling invasions, suppressing insurrection and Indian hostilities, enforcing the laws, and protecting the public property.*

*Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of War be and he*

is hereby authorized and directed to cause to be examined and adjusted all the accounts of the State of Oregon against the United States for money expended and indebtedness assumed in organizing, arming, equipping, supplying clothing, subsisting, transporting, and paying either the volunteer or militia forces, or both, of said State called into active service by the Governor thereof after the fifteenth day of April, eighteen hundred and sixty-one, to aid in repelling invasions, suppressing insurrections and Indian hostilities, enforcing the laws, and protecting the public property in said State and upon its borders, except during the Modoc war.

SEC. 2. That the Secretary of War shall also examine and adjust the accounts of the State of Oregon for all other expenses necessarily incurred on account of said forces having been called into active service as herein mentioned, including the claims assumed or paid by said State to encourage enlistments, and for horses and any other property lost or destroyed while in the line of duty by said forces; *provided*, that in order to enable the Secretary of War to fully comply with the provisions of this Act, there shall be filed in the War Department, by the Governor of said State or a duly authorized agent, an abstract, accompanied with proper certified copies of vouchers or such other proof as may be required by said Secretary, showing the amount of all such expenditures and indebtedness, and the purposes for which the same were made.

SEC. 3. That the Secretary of War shall report in writing to Congress, at the earliest practicable date, for final action, the results of such examination and adjustment, together with the amounts which he may find to have been properly expended for the purposes aforesaid.

Forty-seventh Congress, first session. S. R. 13.

In the Senate of the United States. December 13, 1881.

Mr. Fair asked and by unanimous consent obtained leave to bring in the following joint resolution; which was read twice and referred to the Committee on Military Affairs:

#### JOINT RESOLUTION

*To authorize the Secretary of War to ascertain and report to Congress the amount of money expended and indebtedness assumed by the State of Nevada in repelling invasions, suppressing insurrection and Indian hostilities, enforcing the laws, and protecting the public property.*

*Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of War be and he is hereby authorized and directed to cause to be examined and adjusted all the accounts of the State of Nevada against the United States for money expended and indebtedness assumed in organizing, arming, equipping, supplying, clothing, subsisting, transporting, and paying either the volunteers or militia, or both, of the late Territory of Nevada and of the State of Nevada, called into active service by the Governor of either thereof after the fifteenth day of April, eighteen hundred and sixty-one, to aid in repelling invasions, suppressing insurrections and Indian hostilities, enforcing the laws, and protecting the public property in said Territory and said State, and upon the borders of the same.*

SEC. 2. That the Secretary of War shall also examine and adjust the

accounts of the late Territory of Nevada and of the State of Nevada for all other expenses necessarily incurred on account of said forces having been called into active service as herein mentioned, including the claims assumed or paid by said Territory and said State to encourage enlistments, and for horses and other property lost or destroyed while in the line of duty of said forces; *provided*, that in order to enable the Secretary of War to fully comply with the provisions of this Act, there shall be filed in the War Department, by the Governor of Nevada or a duly authorized agent, an abstract, accompanied with proper certified copies of vouchers or such other proof as may be required by said Secretary, showing the amount of all such expenditures and indebtedness, and the purposes for which the same were made.

SEC. 3. That the Secretary of War shall report in writing to Congress, at the earliest practicable date, for final action, the results of such examination and adjustment, together with the amounts which he may find to have been properly expended for the purposes aforesaid.

### EXHIBIT No. 5.

Forty-seventh Congress, first session. S. 1673.

In the Senate of the United States. April 11, 1882.

Mr. Grover, from the Committee on Military Affairs, reported the following bill, which was read the first and second times by unanimous consent:

#### A BILL

*To authorize the Secretary of the Treasury to examine and report to Congress the amount of all claims of the States of Texas, Oregon, and Nevada, and the Territories of Washington and Idaho, for money expended and indebtedness assumed by said States and Territories in repelling invasions and suppressing Indian hostilities.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the Secretary of the Treasury is hereby authorized and directed, with the aid and assistance of the Secretary of War, to cause to be examined and investigated all the claims of the States of Texas, Oregon, and Nevada, and the Territories of Washington and Idaho, against the United States of America, for moneys alleged to have been expended and for indebtedness alleged to have been assumed by said States and Territories in organizing, arming, equipping, supplying, clothing, subsisting, transporting, and paying the volunteer and military forces of said States and Territories called into active service by the proper authorities thereof, between the fifteenth day of April, in the year eighteen hundred and sixty-one and the date of this Act, to repel invasions and to suppress insurrections and Indian hostilities in said States and Territories and upon their borders, including all proper expenses necessarily incurred by said States and Territories on account of said forces having been so called into active service as aforesaid, and also all proper claims paid or assumed by said States and Territories for horses and equipments actually lost by said forces while in the line of duty in active service (excepting and excluding therefrom any claim said State of Oregon may have for money expended and indebtedness assumed or incurred in suppressing Modoc Indian hostilities during the Modoc Indian war, and

in defending that State from invasion by said Indians during the years eighteen hundred and seventy-two and eighteen hundred and seventy-three, which were submitted to and passed upon, by either approval or rejection, by Inspector-General James A. Hardie, United States Army). Said accounts for and on behalf of said State of Texas shall be confined to claims arising since the twentieth day of October, eighteen hundred and sixty-five, and for and on behalf of said Territories of Idaho and Washington for said claims arising in the years eighteen hundred and seventy-seven and eighteen hundred and seventy-eight.

SEC. 2. That no higher rate shall be allowed for the services of said forces, and for supplies, transportation, and other proper expenses, than was allowed and paid by the United States for similar services in the same grade and for the same time in the United States Army serving in said States and Territories, and for similar supplies, transportation, and other proper expenses during the same time furnished the United States Army in the same country; and no allowance shall be made for services of such forces except for the time during which they were engaged in active service in the field; and no allowance shall be made for the services of any person in more than one capacity at the same time, or for any expenditures for which the Secretary of War shall decide there was no necessity at the time and under all the circumstances.

SEC. 3. That to enable the said officers to make the examination and investigation herein authorized, the Governors of the said States and Territories, respectively, or their duly authorized agents, shall file with the Secretary of the Treasury abstracts and statements of all such claims by said States and Territories, showing the amounts of such expenditures and indebtedness and the purposes for which they were made, and accompanied with proper vouchers and evidence.

SEC. 4. That the Secretary of the Treasury shall, at the earliest practicable time, report to Congress for final action the results of such examination and investigation, and the amount or amounts found to have been properly expended for the purposes aforesaid; *provided*, that whenever the examination of the accounts of any State or Territory hereinbefore mentioned shall have been completed, the same shall be separately reported to Congress, without reference to the final examination of the accounts of any other State or Territory.

SEC. 5. That any military services performed and expenditures on account thereof incurred during the Territorial organization of Nevada, and paid for or assumed by either said Territory or said State of Nevada, shall be also included, and examined, and reported to Congress in the same manner as like services and expenditures shall be examined and reported for the State of Nevada.

Forty-seventh Congress, first session. Senate. Report No. 575.

In the Senate of the United States. May 12, 1882—Ordered to be printed.

Mr. Grover, from the Committee on Military Affairs, submitted the following

#### REPORT.

[To accompany bill S. 1673.]

The Committee on Military Affairs, to whom were referred Senate Bill 1144, and Senate Joint Resolutions 10 and 13, "to authorize an examination

and adjustment of the claims of the States of Kansas, Nevada, Oregon, and Texas, and of the Territories of Idaho and Washington, for repelling invasions and suppressing insurrections and Indian hostilities therein," submit the following report:

#### OREGON.

It appears by the report of the Adjutant-General, United States Army, of April 3, 1882, that one regiment of cavalry, one regiment of infantry, and one independent company of cavalry were raised in the State of Oregon during the late war of the rebellion, and that the expenses incident thereto have never been reimbursed said State by the United States; and that the claims therefor have never been heretofore presented by said State for audit and payment by the United States, as per report of the Secretary of War of April 15, 1882, and of the Third Auditor of the Treasury of April 8, 1882. Under Section 3489 of the Revised Statutes, the claim for expenditures so incurred by said State cannot now be presented for audit and payment without legislation by Congress. In addition thereto there are some unadjusted claims of said State growing out of the Bannock and Umatilla Indian hostilities therein in 1877 and 1878, evidenced by a communication of the Secretary of War, of date last aforesaid, and some unadjusted balances pertaining to the Modoc war, not presented for audit to General James A. Hardie, approximating the sum of \$5,000.

#### NEVADA.

It appears by the report of the Adjutant-General, United States Army, of February 25, 1882, that one regiment of cavalry and one battalion of infantry were raised in the late Territory of Nevada during the late war of the rebellion, and that the expenses of raising, organizing, and placing in the field said forces were never paid by said Territory, but were assumed and paid by the State of Nevada, and that none of said expenses so incurred by said Territory, and assumed and paid by said State, have ever been reimbursed the State of Nevada by the United States, and that no claims therefor have ever been heretofore presented by either said Territory or said State for audit and payment by the United States. Under Section 3489 of the Revised Statutes, hereinbefore referred to, the payment of these claims is barred by limitation.

These forces were raised to guard the overland mail route and emigrant road to California, east of Carson City, and to do other military service in Nevada, and were called out by the Governor of the late Territory of Nevada upon requisitions therefor by the Commanding-General of the Department of the Pacific, and under authority of the War Department, as appears by copies of official correspondence furnished to your committee by the Secretary of War and the General commanding the Division of the Pacific; and it further appears that there are some unadjusted claims of the State of Nevada for expenses growing out of the so called White River Indian war of 1875, and aggregating \$17,650 98, and of the so called Elko Indian war of 1878 therein, and aggregating \$4,654 64, and which sums, it appears by the official statement of the Controller of said State of Nevada, were expended and paid out of the Treasury of said State.

#### TEXAS.

The unadjusted claims of the State of Texas, provided for by this bill, are those which accrued subsequent to October 14, 1865. These have been

heretofore the subject-matter of much correspondence between the State authorities of Texas and the authorities of the United States, and have several times received the partial consideration of both branches of Congress, but without reaching any finality, never having been audited or fully examined, and consequently no payment on account thereof has been made.

These claims are referred to in Senate Ex. Doc. No. 74, second session Forty-sixth Congress, and in the executive documents therein cited.

It appears by the official correspondence exhibited in the document referred to, and copies of official correspondence from the State authorities of Texas, and submitted to your committee, that the expenses for which the State of Texas claims reimbursement were incurred by the authorities thereof under its laws, and for the proper defense of the frontier of said State against the attacks of numerous bands of Indians and Mexican marauders. These claims approximate the sum of \$1,027,375 67, and were incurred between October 14, 1865, and August 31, 1877.

#### WASHINGTON AND IDAHO.

The volunteer troops in Washington and Idaho were in the field during Indian hostilities in 1877 and 1878, in said Territories, by orders of the local authorities thereof. While these volunteers were not mustered into the regular service of the United States Army, they were attached to the command of United States troops in the Department of the Columbia, and acted with said troops, rendering valuable and faithful services during said wars, under the orders and immediate command of officers of the Regular Army of the United States, as appears by copies of orders in the hands of your committee.

The obligation of the General Government to defend each State is acknowledged to be included in the Constitutional obligation to maintain the "*common defense*," by a long series of Acts of Congress making appropriations to cover the expenses of States and Territories of the Union which have raised troops and have incurred liabilities in defending themselves against Indian hostilities and other disturbances.

The bill herewith reported provides for an examination of the claims and accounts of the States and Territories therein named by the Secretary of the Treasury, acting in connection with the Secretary of War, and that they report the amount of money necessarily expended and indebtedness properly assumed in organizing, supplying, and sustaining volunteers and militia called into active service by each of them in repelling invasions and suppressing Indian hostilities therein, during the periods named.

This bill is carefully guarded against the assumption by the United States of unnecessary liabilities, and fixes the pay of volunteers and militia of these several States and Territories on the basis of the pay of regular troops.

Your committee therefore report the present original bill as a substitute for Senate Bill 1144 and Senate Joint Resolutions 10 and 13, which heretofore have been under consideration by said committee, having the same objects as provided for by this bill, and recommend its passage.



**EXHIBIT No. 6.**

Public—No 125.

**AN ACT**

*To authorize the Secretary of the Treasury to examine and report to Congress the amount of all claims of the States of Texas, Colorado, Oregon, Nebraska, California, Kansas, and Nevada, and the Territories of Washington and Idaho, for money expended and indebtedness assumed by said States and Territories in repelling invasions and suppressing Indian hostilities, and for other purposes.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury is hereby authorized and directed, with the aid and assistance of the Secretary of War, to cause to be examined and investigated all the claims of the States of Texas, Colorado, Oregon, Nebraska, California, Kansas, and Nevada, and the Territories of Washington and Idaho, against the United States of America, for moneys alleged to have been expended and for indebtedness alleged to have been assumed by said States and Territories in organizing, arming, equipping, supplying, clothing, subsisting, transporting, and paying the volunteer and military forces of said States and Territories called into active service by the proper authorities thereof, between the fifteenth day of April, in the year 1861, and the date of this Act, to repel invasions and Indian hostilities in said States and Territories and upon their borders, including all proper expenses necessarily incurred by said States and Territories on account of said forces having been so called into active service as aforesaid, and also all proper claims paid or assumed by said States and Territories for horses and equipments actually lost by said forces while in the line of duty in active service (excepting and excluding therefrom any claim said State of Oregon may have for money expended and indebtedness assumed or incurred in suppressing Modoc Indian hostilities during the Modoc Indian War, and in defending that State from invasion by said Indians during the years 1872 and 1873, which were submitted to and passed upon, by either approval or rejection, by Inspector-General James A. Hardie, United States Army). Said accounts for and on behalf of said State of Texas shall be confined to claims arising since the twentieth day of October, 1865, and shall include the necessary expenses of defense against Mexican raids or invasions as well as those for defense against Indian hostilities, and for, and on behalf of, said Territories of Idaho and Washington for said claims arising in the years 1877 and 1878.*

*SEC. 2. That no higher rate shall be allowed for the services of said forces, and for supplies, transportation, and other proper expenses, than was allowed and paid by the United States for similar services in the same grade and for the same time in the United States Army serving in said States and Territories, and for similar supplies, transportation, and other proper expenses during the same time furnished the United States Army in the same country; and no allowance shall be made for services of such forces except for the time during which they were engaged in active service in the field; and no allowance shall be made for the services of any person in more than one capacity at the same time, or for any expenditure for which the Secretary of War shall decide there was no necessity at the time and under all the circumstances.*

*SEC. 3. That to enable the said officers to make the examination and investigation herein authorized, the Governors of the said States and Territories, respectively, or their duly authorized agents, shall file with the Secretary of the Treasury, abstracts and statements of all such claims by said States and Territories, showing the amounts of such expenditures and indebtedness, and the purposes for which they were made, and accompanied with proper vouchers and evidence.*

*SEC. 4. That the Secretary of the Treasury shall, at the earliest practicable time, report to Congress for final action the results of such examination and investigation, and the amount or amounts found to have been properly expended for the purposes aforesaid; provided, that whenever the examination of the accounts of any State or Territory hereinbefore mentioned shall have been completed, the same shall be separately reported to Congress without reference to the final examination of the accounts of any other State or Territory.*

*SEC. 5. That any military services performed and expenditures on account thereof, incurred during the Territorial organization of Nevada, and paid for or assumed by either said Territory or said State of Nevada, shall be also included, and examined and reported to Congress in the same manner as like services and expenditures shall be examined and reported for the State of Nevada.*

Approved June 27, 1882.

**EXHIBIT No. 7.**

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT, }  
SACRAMENTO, CAL., March 31, 1884. }

In addition to the claims due the State of California from the United States enumerated in the preamble to Assembly Concurrent Resolution No. 20, and adopted by the Legislature of California on March 3, 1883, Captain John Mullan, of San Francisco, California, now residing at Washington City, D. C., is hereby appointed agent and attorney to represent the interest of the State of California before the proper authorities of the United States at Washington City, D. C., in the matter of all moneys or balances that have been paid, or which remain due and to be or liable to be paid in whole or in part by the State of California, on account of any Indian war bonds or coupons issued by the State of California under the authority of the Legislature thereof, in its Acts approved fifteenth February, 1851, third May, 1852, and twenty-fifth April, 1857, respectively, for the suppression of Indian hostilities within said State, for the purpose of recovering from the United States for the State of California a sum equivalent thereto in payment or satisfaction of the whole thereof; together with all interest which is now or which may hereafter become due, payable, or allowed thereon, or on any part thereof, by the United States; and also, to recover from the United States all interest that is now or which may hereafter become due, payable, or allowed by the United States to the State of California, on account of any part of the money expended or liabilities assumed by this State on account of the war of the rebellion.

The compensation of Captain Mullan for his services in the foregoing named matters is fixed at twenty per cent of the moneys that may be collected by him or paid to the State of California in any of these premises. Provided, however, that this State shall not in any event become liable for any expenses, fees, or salaries of any nature whatever other than such contingent commission.

This appointment and commission shall be subject to the ratification of the Legislature, otherwise to be void.

GEORGE STONEMAN,  
Governor of California.

# EXHIBIT No. 8.

## CHAPTER XVI.

*Senate Concurrent Resolution No. 3, relative to directing the Governor to fix the compensation for services rendered by Captain John Mullan, in collections of claims due the State of California from the United States.*

[Adopted March 3, 1885.]

WHEREAS, The Governor and State Surveyor-General of this State, respectively, have heretofore appointed Captain John Mullan, of San Francisco, California, agent and attorney to represent the State of California before the proper authorities of the United States, at Washington, D. C., in the matter of the claims of the State of California against the United States, growing out of past Indian hostilities, and for interest on moneys heretofore expended by this State on account of military operations herein and borders hereof, and in recovering all land fees heretofore illegally paid to the United States by this State; and whereas, in pursuance of Concurrent Resolution Number Twelve, adopted February twenty-sixth, eighteen hundred and eighty-one, and in pursuance of Assembly Joint Resolution Number Thirty, adopted March ninth, eighteen hundred and seventy-two, James E. Hale and Thomas M. Nosler were duly appointed and commissioned agents on behalf of the State of California and the Governor thereof, by themselves and their duly constituted agents, to collect from the Government of the United States the cost, charges, and expenses properly incurred by the State of California for enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting its troops employed in aiding to suppress the insurrection against the United States; and whereas, said James E. Hale and Thomas M. Nosler have duly constituted said Captain John Mullan their agent and attorney, in pursuance of the foregoing authority conferred on them, in their names, places, and stead, to demand and receive all said moneys from said Government of the United States, and in and about the said premises to act as their agent therein; therefore, be it

SECTION 1. *Resolved by the Senate of California, the Assembly concurring,* That the appointments so conferred upon Captain John Mullan by the Governor and Surveyor-General, respectively, are hereby ratified and confirmed, and the Governor of this State be and he is hereby authorized and directed to fix the compensation for the services by Captain John Mullan heretofore and that may be by him hereafter rendered, at twenty per cent of each of the sums or claims that may be by him collected from the United States, and to pay to him such per cent out of the moneys that may be collected by him and paid to this State on account of each of the foregoing matters respectively; *provided, however,* that this State shall not, in any event, become liable for any expenses, fees, and salaries of any nature whatever, other than such contingent commission.

SEC. 2. That the proper State officers of the State of California be and they are hereby authorized and directed to deliver to Captain John Mullan, or to his authorized agent, all the original vouchers, certificates, and

papers of every kind and nature relating to the claims of this State against the Government of the United States for or on account of each of the foregoing matters respectively, and also all Controller's warrants that have been heretofore paid and canceled, and which may be needed to perfect any of the claims of this State against the United States, represented by him.

SEC. 3. That said State officers shall prepare and take from Captain John Mullan, or from his authorized agent, a receipt in writing, bound in a book same as they keep in their offices for all such papers as aforesaid, and which shall show what the papers are in each case, the date thereof, by what Board of Examiners passed, the amount and date of the warrant, and in whose favor drawn.

JOHN DAGGETT,  
President of the Senate.

W. H. PARKS,  
Speaker of the Assembly.

THOS. L. THOMPSON,  
Secretary of State.

Attest:

[Indorsed:]

Senate concurrent Resolution No. 3, passed the Senate February 25, A. D. 1885.

EDWIN F. SMITH,  
Secretary of the Senate.

Passed the Assembly February 26, A. D. 1885.

FRANK D. RYAN,  
Clerk of the Assembly.

This resolution was received by the Governor this second day of March, A. D. 1885.

W. W. MORELAND,  
Private Secretary of the Governor.

STATE OF CALIFORNIA, }  
DEPARTMENT OF STATE. }

I, Thos. L. Thompson, Secretary of State of the State of California, do hereby certify that I have carefully compared the annexed copy of Senate Concurrent Resolution No. 3, adopted by the Legislature of the State of California at its twenty-sixth session, with the original now on file in my office, and that the same is a correct transcript therefrom and of the whole thereof. Also, that this authentication is in due form and by the proper officer.

Witness my hand and the Great Seal of State, at office in Sacramento, California, the thirteenth day of March, A. D. 1885.

THOS. L. THOMPSON,  
Secretary of State.

By A. E. SHATTUCK, Deputy.

[SEAL.]

**EXHIBIT No. 9.**

Forty-eighth Congress, first session. H. Res. 172. Printer's No., 5692.

In the House of Representatives. February 25, 1884—Read twice, referred to the Committee on Military Affairs, and ordered to be printed.

Mr. Rosecrans introduced the following joint resolution:

**JOINT RESOLUTION**

Amendatory of the Act of June twenty-seventh, eighteen hundred and eighty-two, entitled "An Act to authorize the Secretary of the Treasury to examine and report to Congress the amount of all claims of the States of Texas, Colorado, Oregon, Nebraska, California, Kansas, and Nevada, and the Territories of Washington and Idaho, for money expended and indebtedness assumed by said States and Territories in repelling invasion and suppressing Indian hostilities, and for other purposes."

*Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the Act of Congress approved June twenty-seventh, eighteen hundred and eighty-two, entitled "An Act to authorize the Secretary of the Treasury to examine and report to Congress the amount of all claims of the States of Texas, Colorado, Oregon, Nebraska, California, Kansas, and Nevada, and the Territories of Washington and Idaho, for money expended and indebtedness assumed by said States and Territories in repelling invasion and suppressing Indian hostilities, and for other purposes," be and the same is hereby amended by striking out the words "April, in the year eighteen hundred and sixty-one," and inserting in lieu thereof the words "January, in the year eighteen hundred and fifty-one."

**EXHIBIT No. 10.**

Forty-eighth Congress, first session. House of Representatives. Report No. 807.

**CLAIMS OF THE STATES OF TEXAS, COLORADO, OREGON, NEBRASKA, CALIFORNIA, KANSAS, AND NEVADA, AND THE TERRITORIES OF WASHINGTON AND IDAHO.**

March 18, 1884—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Rosecrans, from the Committee on Military Affairs, submitted the following

**REPORT.**

[To accompany H. Res. No. 172.]

Your committee having had under consideration the above resolution, report as follows:

The Act which the joint resolution proposes to amend was passed as a substitute for Senate Bills Nos. 1673, 1310, 1144, and 87, and Senate Joint Resolution No. 10, upon which was made a favorable report, No. 133, Forty-seventh Congress, and House Bills Nos. 422, 1688, 1908, 1909, 1936, and 3839, and House Joint Resolutions Nos. 27, 34, and 47, upon which was made a favorable report, No. 141, Forty-seventh Congress.

The date of April 15, 1861, was fixed as the earliest limit of the claims in question, because said claims of the various States and Territories mentioned in the above bills and joint resolutions were on account of expenditures subsequent to that date. It is only requisite to extend the benefits of this Act to the State of California, whose expenditures were mostly, if not altogether, during the ten years anterior to the date fixed therein. The State of California had a bill for payment of the unpaid balance due her for expenditures in Indian wars in 1851 and 1852, before the War Claims Committee of the Forty-seventh Congress, upon which a favorable report was made, but no further action taken, and consequently the name of the State of California did not appear in this general bill as reported by the Committee on Military Affairs. Subsequently, when the bill came to the House, the name of California was inserted as an amendment, on motion of one of the members of the California delegation who did not know that the expenditures made by that State were prior to the date mentioned in the bill (April 15, 1861).

From the report, No. 1847, Forty-seventh Congress, it will be seen that California had established a claim which is not within the provisions of this Act. It also appears from a letter of the Third Auditor, dated April 11, 1873 (see Appendix A), that Governor McDougal called into service a battalion called the Mariposa Volunteers, for the purpose of suppressing the insurrection of the Mariposa Indians, which was mustered into service January 24, 1851, and served until July 25, 1851, the expense of which the State assumed, but which in good conscience should have been paid by the Government of the United States. It is also stated in a letter to the Chairman of this committee (see Appendix B) that the State in 1857 assumed, by Act of the Legislature of April twenty-fifth, the payment of certain other expenses for the suppression of Indian hostilities of a similar character but of a small amount, the payment of which was provided for in 1862; but as the expenses were incurred prior to 1861, California could not obtain relief under the Act in question.

To give to California the benefits and advantages which the Act accords to other States and Territories under like circumstances, it will be sufficient to amend the Act by adding at the end of Section 1 of said Act—

"Provided that all such claims of the State of California arising on and after the first day of January, 1851, shall be examined and investigated as aforesaid."

Not doubting that California ought to be entitled to the benefits of the Act the same as the other States specified therein, your committee recommend that the joint resolution do pass.

**APPENDIX A.**

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE, }  
WASHINGTON, D. C., April 11, 1873. }

SIR: In reply to your letter of the nineteenth of March, addressed to the Secretary of War, and referred to this office, I have to inform you that the battalion of Mariposa Vols., under command of Maj. James Savage, was in service from twenty-fourth of January, 1851, until twenty-fifth July, 1851.

The Captains commanding in the battalion were John Boling, William Dill, and John J. Kuykendall.

Very respectfully,

A. M. GANGEWER,  
Acting Auditor.

E. J. Smith, Esq., No. 217 D street, Washington, D. C.

**APPENDIX B.**

DEAR GENERAL: Permit me to call your attention to House Joint Resolution No. 172, introduced February 25, 1884, and referred to your honorable Committee on Military

Affairs, and to some of the reasons, in so far at least as same relates to the State of California, why said resolutions should pass, to wit:

There are several instances wherein between the middle of January, 1851, and middle of April, 1861, calls were made upon the citizens of California to organize themselves in said State to suppress Indian hostilities, and for which the State of California incurred some expense and liability, and for which there is not now any adequate legislation to reimburse said State. Among other cases, I would cite that of the "Mariposa Battalion," called out when Governor McDougal was Governor of that State, about the middle of January, 1851, and mustered into the service on the twenty-fourth day of January, 1851, and served from January 24, 1851, to July 25, 1851, as per letter of Third Auditor of April 11, 1873, inclosed as an exhibit. These volunteers provided their own horses and equipments. The camp supplies and baggage-trains were furnished by the State of California. This military force was called into existence by the State authorities, but its maintenance was at the expense of the General Government. Maj. Ben. McCullough was offered the command of the battalion, but he declined it.

Such men in California at that time as James D. Savage volunteered and served as Major; John J. Kuykendall, John Boling, and William Dill as Captains; Reuben Chandler, Gilbert, and Crawford as Lieutenants; A. Bronson and Lewis Leach as Surgeons, and Drs. Pfifer and Black as Assistant Surgeons; with Barbour, Brunell, McKee, Wozencraft, Hays, and other distinguished Californians, many of whom are known to you. Among others in said battalion were Col. Thomas Henley (father of Hon. Barclay Henley, your colleague now in Congress), Wm. B. Lewis, of Fresno, and W. J. Campbell of Kings River, Tulare County, California, and others.

I also cite you the instances of the expenses incurred by the State of California in the suppression of Indian hostilities in certain counties of California assumed by said State April 25, 1857, and payment provided for May 21, 1862. So that the date of incurring such expense was prior to April 15, 1861, but payment made by California subsequent to April 15, 1861, and which case, therefore, would not strictly come within the purview of the Act of June 27, 1882, and which expenses have not yet been reimbursed said State by any adequate provision by Congress.

While the expenses in these cases are not large, equity and good conscience both enjoin that some ample legislative provision should be now made to fully meet the same.

In my judgment this resolution (H. Res. 172), if passed, will be ample to meet all such cases.

The Act of Congress which your joint resolution seeks to amend has passed through the careful scrutiny of both the Military Committee of the Senate and of the House and both branches of Congress before it became a law, and hence it may be assumed to fully represent the views of Congress as to the principle and measure of relief to be granted said States in said Act, and Resolution No. 172 is intended simply to change the date of April 15, 1861, in said Act, to January 15, 1851, so as to admit such cases as may exist in any of said States between the two dates named in said resolution and of the classes as now provided for by law.

The history of the Act of June 27, 1882, now sought to be amended, might be appropriately referred to by me with a view of stating to your honorable committee why the *fifteenth April*, 1861, came to be named in said Act at all.

As State agent for Oregon and Nevada in December, 1881, I believe that under Section 3489 of the Revised Statutes the States of Oregon and Nevada could not recover from the United States the expenses by them incurred during the war of the rebellion, 1861-'65, without additional legislation, and because said two States had not then filed their claims against the United States for the expenditure during the war of the rebellion and under the Act of July 27, 1861. Whereupon, at my request, on December 10, 1881, Senator Grover of Oregon, introduced in the Senate, Senate Joint Resolution No. 10 for Oregon (copy inclosed herewith). On December 13, 1881, Senator Fair also introduced Senate Joint Resolution No. 13 for Nevada (copy inclosed herewith); and on February 8, 1882, Senator Plumb introduced Senate Bill No. 1144, which, while including both Oregon and Nevada, also included Kansas, Texas, Idaho, and Washington Territories. (See copies inclosed herewith.) But, as Senator Plumb had on December 5, 1881, introduced Senate Bill No. 87, which, like all the foregoing recited bills, were referred to the Senate Committee on Military Affairs, said Senate Bill No. 87 was on February 7, 1882, reported back to the Senate by Senator Cockrell in Senate Report No. 133, first session, Forty-seventh Congress, and acted upon by the Senate as a separate measure (see copy of report that accompanied said Senate Bill No. 87, herewith inclosed), and passed Senate thirtieth March, 1882.

Now, in none of these bills was any provision made for California, or any reference in any thereof to said State. Thereafter, to wit, on May 12, 1882, Senator Grover reported back a substitute (Senate No. 1673) for said Senate Resolution No. 10 and Senate Resolution No. 13 and Senate bill No. 1144, and, as will appear from copy herewith inclosed, and of his Report No. 575, first session, Forty-seventh Congress, and in which report he left out Kansas, and because said State had been reported on as a separate measure, and acted on separately, as before recited.

Now, in these Senate Joint Resolutions Nos. 10 and 13, without any particular attention being paid to the date, reference was had more especially to the expenses incurred during the war of the rebellion by Oregon and Nevada, and which expenses began on April 15, 1861; the date of April 15, 1861, named in said resolution, chanced thereby to become the date named in Senator Grover's substitute. As this was being discussed in the Senate (see Record, vol. No. 13, pages 6 to 8, first session, Forty-eighth Congress), it received sun-

dry amendments, and by which Colorado, Nebraska, and California were included, and in that shape it passed the Senate on eighth June, 1882. In the House there were also sundry bills and resolutions introduced and to accomplish the same ends, and all referred to your Military Committee, to wit: House Bills Nos. 422, 1688, 1908, 1909, 1936, and House Resolutions Nos. 27 and 34, and for all of which Mr. Upson, from your Military Committee, on July 31, 1882, reported a substitute (H. R. No. 3839), with a report thereon (No. 141), copies of all of which bills, resolutions, and reports are inclosed herewith. This House substitute (No. 3839) was not acted on in the House, but when the aforesaid Senate Bill No. 1673 (which passed the Senate) reached the House, the friends of the Senate Kansas Bill (No. 87) sought to have said Senate bill, in which Kansas was not included, amended so as to include Kansas; this amendment was made in the House on the twentieth day of June, 1882 (see extract of Record, June 22, herewith); whereupon this Senate bill, so amended, returned to the Senate for its concurrence, and it was concurred in by the Senate on the twentieth day of June, 1882, and was approved and became the law on June 27, 1882; and which law House Resolution No. 172 seeks to amend simply by changing the date named therein, and not otherwise.

This will account for the fact that no special attention was given to the date named therein, April 15, 1861, and the manner in which California came in under its provisions. The fact is that there have not been any Indian hostilities in California since April 15, 1861, but all occurred prior to that date, and unless said Act be amended as resolved in said House Resolution No. 172, it is simply a dead letter to the State of California. The intention of Congress in said Act was to provide for all cases of the class named in said Act not heretofore provided for, and if there be any cases named in said Act in the other States enumerated in said Act, as I submit do now exist in the State of California, then there is every good reason why said resolution should be unanimously and favorably recommended for passage.

I therefore suggest in any case that it be enacted, even if its provisions be limited only to the State of California.

Respectfully,

JOHN MULLAN.  
State Agent for California.

Hon. W. S. Rosecrans, Chairman Committee on Military Affairs, House of Representatives.

## EXHIBIT No. 11.

HOUSE OF REPRESENTATIVES, U. S.,  
WASHINGTON, D. C., January 21, 1884. }

Captain JOHN MULLAN, 1310 Conn. Avenue, Washington, D. C.:

DEAR CAPTAIN: I have received both your pamphlet and the certified copies of the resolutions of the California Legislature. One copy of the resolution was introduced and referred to the Committee on War Claims; the other I have. You sent me two. Our committee has authorized me, in my discretion, to facilitate the passage of Joint Resolution H. R. 172 by smoothing the phraseology, and adding a mandate on the Secretary of War to have an investigation made.

Very truly yours,

W. S. ROSECRANS.

## EXHIBIT No. 11½.

Forty-eighth Congress, first session. H. R. 50.

In the House of Representatives. December 10, 1883—Read twice, referred to the Committee on Military Affairs, and ordered to be printed.  
Mr. Rosecrans introduced the following bill:

## A BILL

*To indemnify the State of California for balances paid and remaining due on account of indebtedness incurred in the Indian wars in said State, for the payment of which the State of California issued bonds in the year eighteen hundred and sixty-two.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the Secretary of the Treasury be and he is hereby authorized and directed to pay to the State of California, or to her duly authorized agent, the sum of four thousand one hundred and seventy-two dollars and fifty-six cents, being the amount of five bonds, eight hundred and thirteen, eight hundred and fourteen, eight hundred and fifteen, eight hundred and sixteen, and eight hundred and nineteen, issued by the State of California on the twenty-first day of May, eighteen hundred and sixty-two, in conformity with the Act of the Legislature of said State authorizing the Treasurer thereof to issue bonds for the payment of expenses incurred in the suppression of Indian hostilities in certain counties of said State, approved April twenty-fifth, eighteen hundred and fifty-seven, which amount is hereby appropriated out of any money in the Treasury not otherwise appropriated, to be paid said State, or to her duly authorized agent, only upon the surrender of said bonds to the Secretary of the Treasury.

Forty-eighth Congress, first session. H. R. 69. Printer's No., 69.

In the House of Representatives. December 10, 1883—Read twice, referred to the Committee on War Claims, and ordered to be printed.

Mr. Rosecrans introduced the following bill:

## A BILL

*To indemnify the State of California for balances paid and remaining due on account of indebtedness incurred in the Indian wars, for the payment of which said State issued bonds in eighteen hundred and fifty-one and eighteen hundred and fifty-two, a part of which and of accrued interest thereon remain unpaid owing to delays occasioned by War Department rulings, under the Act of Congress of August fifth, eighteen hundred and fifty-four.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the sum of two hundred and fifty thousand dollars, or so much thereof as may be necessary therefor, be and the same is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to indemnify the State of California for balances paid and remaining due and to be paid by said State on account of Indian war bonds issued by said State under the Acts of the Legislature of eighteen hundred and fifty-one and eighteen hundred and fifty-two, and accrued interest thereon, recognized by the Act of Congress of August fifth, eighteen hundred and fifty-four, but unpaid owing to delay due to War Department rulings.

SEC. 2. That upon his draft the Secretary of the Treasury shall cause the aforesaid sum to be paid over to the Treasurer of the State of California, who shall promptly apply the same to the payment of said balances of indebtedness, and with least possible delay forward the vouchers there-

for, accompanied by an abstract and account-current, and any balance of said sum remaining unexpended and to be repaid, to the Secretary of the Treasury, who, upon receipt thereof, after due verification of the same, shall order the amount to be passed to the credit of said Treasurer of the State of California, in final settlement of his accounts; *provided*, that the Governor of said State, at the time of rendering said accounts, shall certify upon said abstracts that the vouchers therein specified are accounts justly due and paid by the State of California.

Forty-eighth Congress, first session. H. R. 6099. Printer's No., 6856.

In the House of Representatives. March 24, 1884—Read twice, referred to the Committee on War Claims, and ordered to be printed.

Mr. Henley introduced the following bill:

## A BILL

*To authorize and require the payment in cash to the State of California of the sum of two hundred and nineteen thousand and seventy-five dollars and ninety-eight cents, for moneys expended and liabilities assumed by said State, to be paid by the United States, for the common defense, prior to August thirty-first, eighteen hundred and sixty-one.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the Secretary of the Treasury be and he is hereby authorized and required to pay to the State of California, or to its authorized agent, out of any money in the Treasury not otherwise appropriated, the sum of two hundred and nineteen thousand and seventy-five dollars and ninety-eight cents in cash, which sum said State expended or assumed to pay on account of services rendered and supplies furnished to suppress Indian hostilities in certain counties of said State prior to the thirty-first day of August, eighteen hundred and sixty-one, and for which said State duly issued bonds, the amount of which have not yet been fully paid by the United States to said State, or to the citizens thereof, and which bonds the State of California promised to pay out of any money to be appropriated by Congress for the payment of such expenses, and as provided for by the Act of the Legislature of said State approved April twenty-fifth, eighteen hundred and fifty-seven, authorizing the Treasurer of California to issue bonds for the payment of expenses incurred in the suppression of Indian hostilities in certain counties of said State.

SEC. 2. That all laws or parts of laws, and all rulings or decisions of any Department of the Government, or of any officer thereof, inconsistent with the foregoing section, be and the same are hereby repealed and annulled.

Forty-eighth Congress, first session. H. R. 6669. Printer's No., 7644.

In the House of Representatives. April 21, 1884—Read twice, referred to the Committee on Appropriations, and ordered to be printed.

Mr. Henley introduced the following bill:

## A BILL

*To reappropriate the unexpended balance heretofore appropriated by Congress for the suppression of Indian hostilities in the State of California.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the unexpended balance of eight thousand three hundred and sixty-two dollars and sixteen cents of the appropriation made by Congress August fifth, eighteen hundred and fifty-four (10th Statutes, pages 582 and 583), and August eighteenth, eighteen hundred and fifty-six (U. S. Statutes, vol. 11, page 91), for the suppression of Indian hostilities in the State of California, and carried to the surplus fund, be and the same is hereby reappropriated; and the Secretary of the Treasury is hereby authorized and directed to pay the said sum to the State of California upon the surrender by said State to said Secretary of bonds and coupons issued by said State in part payment of said expenses, which bonds and coupons have been redeemed and paid by said State in said sum; and in the event that bonds and coupons so issued and redeemed and paid by said State in said sum have been canceled and destroyed by the authority of the Legislature thereof, then the aforesaid sum shall be paid said State upon her furnishing the Secretary of the Treasury satisfactory evidence that bonds and coupons so issued have been redeemed, paid, canceled, and destroyed to the amount of said unexpended balance, under and by the authority of the Legislature of said State.*

Forty-eighth Congress, second session. H. R. 7975.

In the House of Representatives. January 19, 1885—Read twice, referred to the Committee on War Claims, and ordered to be printed.

Mr. Henley introduced the following bill:

## A BILL

*To indemnify the State of California on account of indebtedness incurred by her in the Indian wars therein, and which has heretofore been paid by said State.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be and he is hereby authorized and directed to pay to the State of California, or to her duly authorized agent, the sum of money heretofore paid by the State of California in the redemption of the Indian war bonds issued by said State under the Acts of her Legislature approved February fifteenth, eighteen hundred and fifty-one, and May third, eighteen hundred and fifty-two, and of the certificates of indebtedness issued in connection therewith, on account of the suppression of Indian hostilities in said State prior to January first, eighteen hundred and fifty-four, and which bonds and certificates have heretofore been redeemed and paid by said State, together with interest thereon at six per centum per annum from the dates of such payment by said State, to the dates of the payment thereof by the United States; provided, that the sum to be so paid by the United States to said State for the matters herein contained shall not exceed one hundred and ten thousand nine hundred and forty-seven dollars and thirty-eight cents, which amount is hereby appropriated out of any money in the Treasury*

not otherwise appropriated, and to be paid to said State upon the surrender by her, or by her duly authorized agent, of said bonds and of said certificates of indebtedness to the Treasury Department of the United States.

Forty-eighth Congress, first session. S. 809.

In the Senate of the United States. December 19, 1883.

Mr. Miller of California asked and, by unanimous consent, obtained leave to bring in the following bill; which was read twice and referred to the Committee on Military Affairs.

## A BILL

*To indemnify the State of California for balances paid and remaining due on account of indebtedness incurred in the Indian wars, for the payment of which said State issued bonds in eighteen hundred and fifty-one and eighteen hundred and fifty-two, a part of which remain unpaid owing to delays occasioned by War Department rulings under the Act of Congress of August fifth, eighteen hundred and fifty-four.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be and he is hereby authorized and directed to pay to the State of California, or her duly authorized agents, any sum found due, upon investigation, for balances alleged to have been paid and remaining due and to be paid by said State on account of Indian war bonds issued by said State under the Acts of the Legislature of eighteen hundred and fifty-one and eighteen hundred and fifty-two, in the suppression of Indian hostilities within the said State prior to the first of January, eighteen hundred and fifty-four, and recognized by the Act of Congress of August fifth, eighteen hundred and fifty-four; provided, that the sum so paid shall not exceed in amount the sum of two hundred and fifty thousand dollars, which amount is hereby appropriated, out of any money in the Treasury not otherwise appropriated, and to be settled upon proper vouchers to be filed and passed upon by the proper accounting officers of the Treasury Department.*

Forty-eighth Congress, first session. S. 811.

In the Senate of the United States. December 19, 1883.

Mr. Miller of California asked and by unanimous consent obtained leave to bring in the following bill; which was read twice and referred to the Committee on Military Affairs:

## A BILL

*To indemnify the State of California for balances paid and remaining due on account of indebtedness incurred in the Indian wars in said State, for the payment of which the State of California issued bonds in the year eighteen hundred and sixty-two.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be and he is hereby authorized and directed to pay to the State of Cali-*



foria, or to her duly authorized agent, the sum of four thousand one hundred and seventy-two dollars and fifty-six cents, being the amount of five bonds, eight hundred and thirteen, eight hundred and fourteen, eight hundred and fifteen, eight hundred and sixteen, and eight hundred and nineteen, issued by the State of California on the twenty-first day of May, eighteen hundred and sixty-two, in conformity with the Act of the Legislature of said State authorizing the Treasurer thereof to issue bonds for the payment of expenses incurred in the suppression of Indian hostilities in certain counties of said State, approved April twenty-fifth, eighteen hundred and fifty-seven, which amount is hereby appropriated out of any money in the Treasury not otherwise appropriated, to be paid said State, or to her duly authorized agent, only upon the surrender of said bonds to the Secretary of the Treasury.

Forty-eighth Congress, first session. S. 1917.

In the Senate of the United States. March 24, 1884.

Mr. Miller of California introduced the following bill, which was read twice and referred to the Committee on Military Affairs:

#### A BILL

*To authorize and require the payment to the State of California of the sum of two hundred and forty-one thousand six hundred and twenty-five dollars and eighty-two cents, for moneys expended and liabilities assumed by said State for the common defense prior to September first, eighteen hundred and fifty-six.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be and he is hereby authorized and required to pay to the State of California, or to its authorized State agent, out of any money in the Treasury not otherwise appropriated, the sum of two hundred and forty-one thousand six hundred and twenty-five dollars and eighty-two cents, in cash, which sum said State expended or assumed to pay on account of services rendered and supplies furnished for the suppression of Indian hostilities in said State prior to September first, eighteen hundred and fifty-six, and for which said State prior to said date duly issued bonds and coupons, the full amount of which have not yet been paid by the United States to said State, or to the citizens thereof, and which bonds and coupons were authorized to be issued by the Acts of the Legislature thereof, approved February fifteenth, eighteen hundred and fifty-one, and May third, eighteen hundred and fifty-two, respectively, and as more particularly set forth in the report of the Controller of said State to the Governor thereof under date of May twenty-seventh, eighteen hundred and seventy-eight.*

SEC. 2. That all laws or parts of laws, and all rulings or decisions of any Department of the Government, or of any officer thereof, inconsistent with the foregoing section, be and the same are hereby repealed and annulled.

Forty-eighth Congress, first session. S. 1970.

In the Senate of the United States. April 1, 1884.

Mr. Groome introduced the following bill; which was read twice and referred to the Committee on Indian Affairs.

#### A BILL

*For the payment of certain coupons of certain Indian war bonds of the State of California.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be and he is hereby directed to pay, out of the unexpended balance of an appropriation of nine hundred and twenty-four thousand two hundred and fifty-nine dollars and sixty-five cents made by the third section of the Act of Congress, approved August fifth, eighteen hundred and fifty-four, the sum of one thousand and ninety-two dollars, which last named amount is hereby reappropriated, to the lawful holder of coupons three, four, and five of two Indian war bonds numbered respectively one hundred and thirty-four and one hundred and thirty-six, issued by the State of California under the provisions of the Act of the Legislature thereof, approved May third, eighteen hundred and fifty-two, for the suppression of Indian hostilities therein, each of said bonds being for the sum of one hundred dollars, and bearing interest at the rate of seven per centum per annum; and of coupons three, four, and five of five other of said Indian war bonds numbered respectively one hundred and eighty-nine, one hundred and ninety, two hundred and twenty-eight, two hundred and twenty-nine, and three hundred and eleven, issued by said State under the provisions of said Act of its Legislature, each of said last mentioned five bonds being for the sum of one thousand dollars, and bearing interest at the rate of seven per centum per annum; provided, that said coupons shall not be paid except out of any amount remaining unapplied of the appropriation of nine hundred and twenty-four thousand two hundred and fifty-nine dollars and sixty-five cents heretofore made.*

Forty-eighth Congress, second session. H. R. 8149.

In the House of Representatives. February 2, 1885—Read twice, referred to the Committee on Appropriations, and ordered to be printed.

Mr. Henley introduced the following bill:

#### A BILL

*To reappropriate the unexpended balance of an appropriation made by former Acts of Congress.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the sum of eight thousand three hundred and sixty-two dollars and sixteen cents, being an unexpended balance of an appropriation made by the Acts of Congress approved August fifth, eighteen hundred and fifty-four, and August eighteenth, eighteen hundred and fifty-six (United States Statutes, vol. 10, pages 582 and 583, and vol. 11, page 91), "to refund to the State of California expenses incurred in suppressing Indian hostilities," which has heretofore lapsed and been covered into the Treasury, be and the same is hereby reappropriated; and the same shall be paid to the State of California upon her surrendering to the Secretary of the Treasury the bonds and coupons aggregating said sum, which have been heretofore redeemed and paid by said State on account of the suppression of the hostilities named*

in said Acts; *provided*, that the sums heretofore paid by the State of California on account of said hostilities, which have not been heretofore repaid by the United States, shall be refunded to said State, with interest at six per centum per annum, from the dates of such payment by said State up to the date of the passage of this Act, and to be paid out of any money in the Treasury not otherwise appropriated, upon proper evidence of such payments by said State being furnished and filed by her with the Secretary of the Treasury.

### EXHIBIT No. 12.

#### HOUSE BILL No. 50.

This bill was introduced in the House of Representatives by Hon. W. S. Rosecrans of California, on tenth December, 1883, and referred to the Committee on Military Affairs; and on ninth January, 1884, reference was changed to the Committee on War Claims, and has for its object to grant to the State of California a specific relief and as set forth in the title of said bill.

A similar bill, No. 809, was also introduced in the Senate by Senator Miller of California, on December 19, 1883, and was, on December 22, 1883, referred by Honorable Senator S. B. Maxey, of the Committee on Military Affairs, United States Senate, to the honorable Secretary of War, for a report, and who, on January 24, 1884, in reply thereto, transmits a letter from the honorable Third Auditor, of January 22, 1884, and which, by order of the Senate, has been printed for the use of the Senate and House, and constitutes Miscellaneous Senate Document No. 40, first session Forty-eighth Congress, and to which is appended a copy (in print) of said Senate Bill No. 809.

This report of said Third Auditor misapprehends the intentions and scope of said bill, and fails to include and give to your honorable committee the full information and facts and history of said matters, due, evidently, from the fact that the same are not matters of record in the Third Auditor's office.

This same subject was before the Forty-seventh Congress, and there introduced by Hon. W. S. Rosecrans of California, in House Bill No. 2139, — session, Forty-seventh Congress, and referred to House Committee on War Claims.

That committee, with all the facts before it, reported back, not the original bill, but in lieu thereof, a substitute, to wit: H. R. No. 7241, copy of which is attached hereto, and made a part hereof, and did accompany same on January 11, 1883, with a full, detailed, and exhaustive report thereon, to wit: House Report No. 1847, second session, Forty-seventh Congress, copy of which is hereto attached, and made a part hereof, and in which the history of the facts are set forth intelligently and fully, and which justified the action of said committee in reporting back said substitute, but which bill failed to be reached for action before the adjournment of the Forty-seventh Congress.

Senate Bill No. 809, and House Bill No. 51, are exact verbatim copies of said House substitute No. 7241, of the Forty-seventh Congress, and which bill has again [on December 10, 1883] been introduced in the House by Hon. W. S. Rosecrans of California, H. R. No. 51, and referred to the honorable House Committee on Military Affairs, but which, on January 9, 1884, was, by order of the House rereferred to the honorable House Committee on War Claims, and before which the same is now pending.

Wherefore, I now respectfully request that the honorable Committee on War Claims of the House of Representatives will give full and due consideration to said House Report No. 1847, herein referred and inclosed herewith by copy, as embodying the history of the facts that justify the legislation now asked for by California, and contained in the said House Bill No. 51, and if necessary, I ask to be further heard in these premises. Respectfully submitted.

Agent and Attorney for the State of California.

To the honorable Chairman, and members of the Committee on War Claims, U. S. House of Representatives.

### EXHIBIT No. 13.

HOUSE OF REPRESENTATIVES, U. S.,  
WASHINGTON, D. C., February 6, 1885. }

To the members of the Committee on Appropriation, U. S. H. R.:

GENTLEMAN: On February 3, 1885, I addressed the honorable Secretary of the Treasury a letter, a copy of which is as follows, to wit:

HOUSE OF REPRESENTATIVES, U. S.,  
WASHINGTON, D. C., February 3, 1885. }

Hon. Secretary of the Treasury, Washington, D. C.:

SIR: Please inform me, and *immediately*, if you can, what amount of the appropriation made by Congress August 5, 1854, and August 18, 1856 (U. S. Statutes, vol. 10, page 582-3, and vol. 11, page 91), "to refund to the State of California expenses incurred in suppressing Indian hostilities," etc., has not been heretofore expended, but which has lapsed and been carried into the Surplus Fund of the Treasury, and oblige,

Yours truly,

BARCLAY HENLEY,  
M. C. from California.

To this letter I received a reply, which is as follows, to wit:

TREASURY DEPARTMENT. }  
February 5, 1885. }

Hon. BARCLAY HENLEY, House of Representatives:

SIR: In reply to your letter of the third instant, asking what amount of the appropriation made by Congress by the Acts of August 5, 1854, and August 18, 1856, "to refund to the State of California expenses incurred in suppressing Indian hostilities," etc., remains unexpended, I have to inform you that it appears from the books of this department that there is now in the Surplus Fund, of the moneys formerly appropriated for this object, the sum of \$8,357 16.

Very respectfully, \*

H. McCULLOCH, Secretary.

And all of which I now submit to your committee in support of H. R. No. 8149, by me, on February 2, 1885, introduced into the House, and by it referred to your committee for action.

I therefore have the honor to request that, in view of all the premises, your honorable committee will at this session embody in your appropriation bill making appropriations for the "Sundry Civil Expenses of the Government," the contents and provisions of my said bill H. R. 8149, which I submit, is in all respects meritorious and just, and that your favorable consideration at this time of the matters therein contained, will be doing an equity (though long delayed) to the State of California, which I, in part, represent.

The words "sixty-two," in line three of my said printed bill 8149, should be changed so as to read "fifty-seven," and thereby tally with the said letter of the honorable Secretary of the Treasury.

Yours very truly,

BARCLAY HENLEY,  
M. C. from California.

AMENDMENT OF MR. HENLEY TO INDIAN APPROPRIATION  
BILL, H. R. 5543.

At end of line insert as follows: (Page —.)

That the unexpired balance of eight thousand three hundred and fifty-seven dollars and sixteen cents of the appropriation made by Congress, August fifth, eighteen hundred and fifty-four (10 Stat. 582), as modified by Acts of August 18, 1856 (11 Stat. 91), and June 23, 1860 (12 Stat. 104), and July 25, 1868 (15 Stat. 175), and March 3, 1881 (21 Stat. 510), to redeem California Indian war bonds issued for expenses in said State incurred prior to January 1, 1854, and carried to the surplus fund, be and the same is hereby reappropriated; and the Secretary of the Treasury is hereby authorized and directed to pay said sum to the State of California, upon the surrender by her to said Secretary of bonds and coupons issued by her in payment of said expenses, which have been heretofore redeemed and paid by said State in said sum, and not heretofore paid by the United States; and the aforesaid sum shall be paid said State upon her furnishing the Secretary of the Treasury satisfactory evidence that bonds and coupons so issued have been redeemed, paid, and canceled by said State, under and by the authority of the Legislature thereof, to the extent of said unexpended balance.

EXHIBIT No. 14.

Forty-eighth Congress, first session. Senate. Mis. Doc. No. 40.

LETTER FROM THE SECRETARY OF WAR,

Transmitting a copy of the report of the Third Auditor of the Treasury upon the bill (S. 809) to indemnify the State of California for balances paid and remaining due on account of indebtedness incurred in the Indian wars.

January 25, 1884—Reported by Mr. Maxey from the Committee on Military Affairs, ordered to be printed, and recommitted.

WAR DEPARTMENT,  
WASHINGTON CITY, January 24, 1884. }

SIR: Referring to so much of your communication of December 22, 1883, as requests information upon the subject of Senate Bill No. 809, "to indemnify the State of California for balances paid and remaining due on account of indebtedness incurred in the Indian wars," etc., I have the honor, in reply, to forward copy of the report of the Third Auditor of the Treasury, dated the twenty-second instant, upon the bill, which it is hoped will afford the information desired.

A similar bill having been introduced in the House of Representatives,

and the subject being one of considerable importance, I beg to request that the letter of the Auditor may be printed.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,  
Secretary of War.

Hon. S. B. Maxey, of Committee on Military Affairs, United States Senate.

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE, }  
WASHINGTON, D. C., January 22, 1884. }

SIR: I have the honor to return \* \* \* "A bill to indemnify the State of California \* \* \*," and the other papers referred to me by your direction.

Notwithstanding the recitals in the bill, I am unable to perceive that any part of the appropriation was due to the *State*, or that the non-payment of the small balance of the appropriation was caused by "delays occasioned by War Department rulings." On the contrary, the facts would seem to be that the small unpaid balance belonged exclusively to the *holders of the yet outstanding California bonds*, and that the sole reason for the non-payment was the failure by a few of such holders to come forward and present their bonds for payment.

A brief history of the legislation by Congress is as follows:

The *original* Act, August 5, 1854 (10 Stat., 582-583), directed the Secretary of War to examine and ascertain the "amount of expense incurred and now actually paid" by the State in the suppression of Indian hostilities within the State prior to January 1, 1854, and to pay the amount so ascertained *into the State Treasury*, but not to exceed \$924,259 65.

But, as shown by correspondence, the State officials determined not to present its claim as the law stood; and by Act of August 18, 1856, Sec. 8 (11 Stat. 91), the law was changed to provide that the appropriation should be used to pay the *holders of the war bonds* which the State had issued on account of such expenses.

An amendment was made by Act of June 23, 1860 (12 Stat., 104), but it was of minor importance, and need not be now set out.

The holders of the great bulk of the bonds presented them within a short time, and received payment.

A period of more than three years then elapsing without further calls, the appropriation became by law "lapsed," and the unexpended balance, \$10,188 65, was therefore carried into the surplus fund.

Subsequently a few bonds, aggregating not over \$2,500, were presented to this office, but were returned, there being no fund for payment; and on March 22, 1866, the Third Auditor recommended to the Secretary of War to ask Congress to reappropriate said balance of \$10,188 65.

By Act of July 25, 1868 (15 Stat., 175), a balance of \$10,183 65 (five dollars short) was reappropriated. Only one person, James Steele, presented any bond, and he was paid \$538 11. Again the appropriation "lapsed" by want of calls upon it for a period of three years; and on July 1, 1874, the balance, \$9,645 52, was carried into the surplus fund.

By Act of March 3, 1881 (21 Stat., pages 510-511), a sufficient amount of the unexpended balance was reappropriated to pay the principal, with interest to July 1, 1860, of four bonds described by denomination and serial numbers; and payment was accordingly made to the owner, Frances D. Bingham, in the sum of \$1,288 36, leaving the balance now in the surplus fund, \$8,357 16.

I do not know why Congress allowed interest to July 1, 1860, on Mrs. Bingham's bonds. On the others interest was allowed to January 1, 1854; as the appropriation, so I understand, would suffice for no more, having been based upon the showing made by the State of the expense incurred by it up to *that date*.

I fail to perceive that the *State* had any right in the unexpended balance.

Very respectfully,

A. M. GANGEWER, Acting Auditor.

Hon. Robert T. Lincoln, Secretary of War.

Forty-eighth Congress, first session. S. 809.

In the Senate of the United States. December 19, 1883.

Mr. Miller of California asked and, by unanimous consent, obtained leave to bring in the following bill; which was read twice and referred to the Committee on Military Affairs:

#### A BILL

*To indemnify the State of California for balances paid and remaining due on account of indebtedness incurred in the Indian wars, for the payment of which said State issued bonds in eighteen hundred and fifty-one and eighteen hundred and fifty-two, a part of which remain unpaid owing to delays occasioned by War Department rulings under the Act of Congress of August fifth, eighteen hundred and fifty-four.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be and he is hereby authorized and directed to pay to the State of California, or her duly authorized agents, any sum found due, upon investigation, for balances alleged to have been paid and remaining due and to be paid by said State on account of Indian war bonds issued by said State under the Acts of the Legislature of eighteen hundred and fifty-one and eighteen hundred and fifty-two, in the suppression of Indian hostilities within the said State prior to the first of January, eighteen hundred and fifty-four, and recognized by the Act of Congress of August fifth, eighteen hundred and fifty-four; provided, that the sum so paid shall not exceed in amount the sum of two hundred and fifty thousand dollars, which amount is hereby appropriated, out of any money in the Treasury not otherwise appropriated, and to be settled upon proper vouchers to be filed and passed upon by the proper accounting officers of the Treasury Department.*

Forty-eighth Congress, first session. Senate. Report No. 158.

In the Senate of the United States. February 12, 1884—Ordered to be printed.

Mr. Maxey, from the Committee on Military Affairs, submitted the following

#### REPORT.

[To accompany bill S. 809.]

The Committee on Military Affairs, to which was referred bill S. 809, respectfully submits the following report:

On December 22, 1883, the committee addressed a communication to the Secretary of War, requesting to be furnished with such information in respect to the matters set forth in this bill as might be had in the War Department. On the twenty-fourth of January, 1884, the Secretary replied as follows:

WAR DEPARTMENT, WASHINGTON CITY, January 24, 1884.

SIR: Referring to so much of your communication of December 22, 1883, as requests information upon the subject of Senate Bill No. 809, to "indemnify the State of California for balances paid and remaining due on account of indebtedness incurred in the Indian wars," etc., I have the honor, in reply, to forward copy of the report of the Third Auditor of the Treasury, dated the twenty-second instant, upon the bill, which it is hoped will afford the information desired.

A similar bill having been introduced in the House of Representatives, and the subject being one of considerable importance, I beg to request that the letter of the Auditor may be printed.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN, Secretary of War.

Hon. S. B. Maxey, of Committee on Military Affairs, United States Senate.

The communication of the Third Auditor therein called for is as follows:

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE, }  
WASHINGTON, D. C., January 22, 1884. }

SIR: I have the honor to return \* \* \* "A bill to indemnify the State of California \* \* \*" and the other papers referred to me by your direction.

Notwithstanding the recitals in the bill, I am unable to perceive that any part of the appropriation was due to the *State*, or that the non-payment of the small balance of the appropriation was caused by "delays occasioned by War Department rulings." On the contrary, the facts would seem to be that the small unpaid balance belonged exclusively to the holders of the yet outstanding California bonds, and that the sole reason for the non-payment was the failure by a few of such holders to come forward and present their bonds for payment.

A brief history of the legislation by Congress is as follows:

The original Act, August 5, 1854 (10 Stat., 582, 583), directed the Secretary of War to examine and ascertain the "amount of expense incurred and now actually paid" by the State in the suppression of Indian hostilities within the State prior to January 1, 1854, and to pay the amount so ascertained into the *State Treasury*, but not to exceed \$924,259 65.

But, as shown by correspondence, the State officials determined not to present its claim as the law stood; and by Act of August 18, 1856, Sec. 8 (11 Stat., 91), the law was changed to provide that the appropriation should be used to pay the holders of the war bonds which the State had issued on account of such expenses.

An amendment was made by Act of June 23, 1860 (12 Stat., 104), but it was of minor importance, and need not be now set out.

The holders of the great bulk of the bonds presented them within a short time, and received payment.

A period of more than three years then elapsing without further calls, the appropriation became by law "lapsed," and the unexpended balance, \$10,188 65, was therefore carried into the surplus fund.

Subsequently a few bonds, aggregating not over \$2,500, were presented to this office, but were returned, there being no fund for payment; and on March 22, 1866, the Third Auditor recommended to the Secretary of War to ask Congress to reappropriate said balance of \$10,188 65.

By Act of July 25, 1868 (15 Stat., 175), a balance of \$10,183 65—five dollars short—was reappropriated. Only one person, James Steele, presented any bond, and he was paid \$538 11. Again the appropriation "lapsed," by want of calls upon it for a period of three years; and on July 1, 1874, the balance, \$9,645 52, was carried into the surplus fund.

By Act of March 3, 1881 (21 Stat., pages 510, 511), a sufficient amount of the unexpended balance was reappropriated to pay the principal, with interest to July 1, 1860, of four bonds described by denomination and serial numbers; and payment was accordingly made to the owner, Frances D. Bingham, in the sum of \$1,288 36, leaving the balance now in the surplus fund, \$8,357 16.

I do not know why Congress allowed interest to July 1, 1860, on Mrs. Bingham's bonds. On the others interest was allowed to January 1, 1854, as the appropriation, so I understand, would suffice for no more, having been based upon the showing made by the State of the expense incurred by it up to *that date*.

I fail to perceive that the *State* had any right in the unexpended balance.

Very respectfully,

A. M. GANGEWER, Acting Auditor.

Hon. Robert T. Lincoln, Secretary of War.

The committee is of the opinion that the report of the Third Auditor is conclusive as against the bill. The argument of counsel for California does not overturn, in the opinion of the committee, the case upon the facts as made out by the Third Auditor. It is insisted that—

The report of the Third Auditor misapprehends the intention and scope of said bill and fails to include and give (to the committee) the full information and facts and history of said matter, due evidently from the fact that the same are not matters of record in the Third Auditor's office.

This argument, it is submitted, would address itself rather to the War Department, or to that branch of it where "the matters of record" not in the Third Auditor's office may be found, or to that office, wherever it be, which contains this testimony. The committee called upon the Secretary of War (this being a war claim) and was furnished with the report of the Third Auditor, with the remark, "which it is hoped will afford the information desired." The importance of this report, in the estimation of the Secretary, is shown by his request to have printed, which the committee requested to be done, and the report was printed, and has evidently been examined by counsel for the State. If there is anything else in the case the committee has not been furnished with it, the committee assuming that all was furnished which in the judgment of the Secretary of War was pertinent.

The committee takes the bill and evidence furnished, and upon it reports the same and recommends that bill S. 809 do not pass.

#### EXHIBIT No. 15.

SENATE CHAMBER, WASHINGTON, }  
April 2, 1884. }

*Captain JOHN MULLAN, 1310 Connecticut Avenue, City:*

DEAR SIR: Your note of yesterday, with reference to S. 809 and S. 1917, is before me. The former bill went over to-day, under rule 9. It is impossible to hold such bills, as you request in this case, under the circumstances, and especially when they have been reported upon adversely. It will come up again in due time, of course.

Very truly yours,

JOHN F. MILLER.

#### EXHIBIT No. 16.

Forty-eighth Congress, first session. H. R. 7380.

In the Senate of the United States. June 24, 1884—Referred to the Committee on Appropriations, and ordered to be printed.

#### AMENDMENT

Intended to be proposed by Mr. Farley to the bill (H. R. 7380) making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-five, and for other purposes, viz.: Insert the following:

That the unexpended balance of eight thousand three hundred and sixty-two dollars and sixteen cents of the appropriation made by Congress August fifth, eighteen hundred and fifty-four (tenth Statutes, pages five

hundred and eighty-two and five hundred and eighty-three), and August eighteenth, eighteen hundred and fifty-six (eleventh Statutes, page ninety-one), for the suppression of Indian hostilities in the State of California, and carried to the surplus fund, be and the same is hereby reappropriated; and the Secretary of the Treasury is hereby authorized and directed to pay the said sum to the State of California upon the surrender by said State to said Secretary of bonds and coupons issued by said State in part payment of said expenses, which bonds and coupons have been redeemed and paid by said State in said sum; and in the event that bonds and coupons so issued and redeemed and paid by said State in said sum have been canceled and destroyed by the authority of the Legislature thereof, then the aforesaid sum shall be paid said State upon her furnishing the Secretary of the Treasury satisfactory evidence that bonds and coupons so issued have been redeemed, paid, canceled, and destroyed to the amount of said unexpended balance, under and by the authority of the Legislature of said State.

#### EXHIBIT No. 17.

#### AMENDMENT TO H. R. 8255.

Intended to be proposed by Mr. Miller of California, to the bill H. R. 8255, making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1885, and for prior years and for other purposes.

Insert at end of line 78 on page 48 of H. R. 8255, as follows, to wit:

That the unexpended balances of appropriations made by the Acts of Congress approved August 5, 1854, August 18, 1856, and March 2, 1861 (U. S. Statutes, volume 10, pages 582-583, volume 11, page 91, and volume 12, pages 199-200), to refund to the State of California, expenses incurred in suppressing Indian hostilities therein, etc., which have heretofore lapsed and been carried into the surplus fund of the Treasury, be and the same are hereby reappropriated, and the same shall be paid to the State of California upon her surrendering to the Secretary of the Treasury, bonds and coupons or other satisfactory vouchers (aggregating said unexpended balances), which have heretofore been wholly redeemed and fully paid by said State on account of the suppression of the hostilities named in said Acts, and not heretofore wholly redeemed or fully paid by the United States.

#### EXHIBIT NO. 18.

HOUSE OF REPRESENTATIVES, U. S.. }  
WASHINGTON, D. C., December 23, 1882. }

*Hon. Third Auditor U. S. Treasury, Washington, D. C.:*

SIR: I have the honor to inclose you, herewith, copy of Senate Report No. 878, which accompanied H. R. No. 1729 of the third session Forty-sixth Congress, and respectfully request that you may furnish me with a copy of the descriptive list of bonds therein referred to (dated February 28, 1862,) as having been filed in your office by the officers of the State of California (Treasurer and Governor), relating to California war

bonds (Indian). Your early compliance with the foregoing request will oblige,

Yours very truly,

C. P. BERRY,  
Member of Congress Third District California.

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE, }  
WASHINGTON, D. C., January 3, 1883.

Hon. C. P. BERRY, *House of Representatives*:

SIR: I have the honor to return your request for a copy of a descriptive list of certain California war bonds, being the list referred to in Senate Report No. 878, Forty-sixth Congress, third session (to accompany H. R. 1729).

Only one descriptive list of bonds issued by the State of California under authority of State Act of May 3, 1852, is found in the files pertaining to such bonds. The aggregate thereof, including interest computed to January 1, 1856, was only \$770,162 49. I presume it was only a partial list, including only such bonds as had been issued to the time it was made. The latest dated bond upon it was April 4, 1855; and the highest serial number in the denomination of \$250 was No. 158.

The registers of this office (claim 9517) show that the bonds presented by and returned to Mr. R. McBratney, were of the denomination of \$250, and bore the serial numbers 164, 166, 167, and 168.

Probably the list referred to in the Senate Report was a supplemental one, including the bonds issued at later dates. I do not find it on file; nor do I find in the papers any reference to it.

Very respectfully,

E. W. KEIGHTLEY, Auditor.

TREASURY DEPARTMENT, January 8, 1883.

Hon. C. P. BERRY, *House of Representatives*:

SIR: As requested in your letter of the fifth instant, I have the honor to transmit herewith a statement of amounts expended from the appropriation of \$400,000, as made by the Act of March 2, 1861, to "pay to California, expenses incurred in suppressing Indian hostilities in 1854-5-6-7-8-9."

I am, very respectfully,

CHARLES T. FOLGER, Secretary.

TREASURY DEPARTMENT, REGISTER'S OFFICE, }  
January 8, 1882.

Statement of amounts expended out of the appropriation of \$400,000, as approved March 2, 1861, to "pay to California for expenses incurred in suppressing Indian hostilities in 1854-5-6-7-8-9."

1863, expenditures .....	\$229,987 67
1864, expenditures .....	542 09
Total amount expenditures .....	\$230,529 76
Carried to the Surplus Fund, June 30, 1864 .....	169,470 24
	\$400,000 00

W. A. TITCOMB, Assistant Register.

TREASURY DEPARTMENT, January 15, 1881.

Hon. JAMES T. FARLEY, *United States Senate*:

SIR: In reply to your inquiry of the twenty-eighth ultimo, concerning certain bonds issued in 1852 and 1853 by the Legislature of the State of California, for the suppression of Indian hostilities in said State, I inclose herewith a copy of a report dated January 11, 1881, of the Third Auditor of the Treasury, giving the numbers of the bonds in question, the dates of their issue and payment, and to whom paid, and the amount of interest paid on each bond.

Very respectfully,

H. F. FRENCH, Acting Secretary.

[Copy.]

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE, }  
WASHINGTON, D. C., January 11, 1881.

SIR: I have the honor to return herewith a letter of Hon. Jas. T. Farley, U. S. Senator from California, dated December 28, 1880, asking information relative to certain bonds named therein, which has been referred to this office.

Below you will find a statement showing the numbers of the bonds referred to, the date of issue, amount of bonds, and amount of interest paid by the United States. The rate of interest allowed was seven per cent, and interest ceased January 1, 1854, viz.:

No. of Bond.	Date of Issue.	Amount.	COUPONS.		
			No. 1. Dated Jan. 1, 1853.	No. 2. Dated Jan. 1, 1854.	Date of Payment of Bonds and Coupons.
33	June 24, 1852 .....	\$500 00	\$17 98	\$35 00	September 22, 1856
283	April 28, 1853 .....	500 00		23 62	September 22, 1856
41	June 22, 1852 .....	1,000 00	36 75	70 00	September 20, 1856
42	June 22, 1852 .....	1,000 00	36 75	70 00	September 20, 1856
43	June 22, 1852 .....	1,000 00	36 75	70 00	September 20, 1856
44	June 22, 1852 .....	1,000 00	36 75	70 00	September 20, 1856
45	June 22, 1852 .....	1,000 00	36 75	70 00	September 20, 1856
46	June 22, 1852 .....	1,000 00	36 75	70 00	September 20, 1856
47	June 22, 1852 .....	1,000 00	36 75	70 00	September 20, 1856
48	June 22, 1852 .....	1,000 00	36 75	70 00	September 20, 1856
49	June 22, 1852 .....	1,000 00	36 75	70 00	September 20, 1856
50	June 22, 1852 .....	1,000 00	36 75	70 00	September 20, 1856
53	June 22, 1852 .....	1,000 00	35 75	70 00	September 20, 1856
54	June 22, 1852 .....	1,000 00	36 75	70 00	September 20, 1856
55	June 22, 1852 .....	1,000 00	36 75	70 00	September 20, 1856
56	June 22, 1852 .....	1,000 00	36 75	70 00	September 20, 1856
57	June 22, 1852 .....	1,000 00	36 75	70 00	September 20, 1856
58	June 22, 1852 .....	1,000 00	36 75	70 00	September 20, 1856
82	June 24, 1852 .....	1,000 00	33 36	70 00	September 20, 1856
89	June 24, 1852 .....	1,000 00	33 36	70 00	September 20, 1856
90	June 24, 1852 .....	1,000 00	36 36	70 00	September 20, 1856
100	June 26, 1852 .....	1,000 00	35 97	70 00	September 20, 1856
110	June 26, 1852 .....	1,000 00	35 97	70 00	September 20, 1856
111	June 26, 1852 .....	1,000 00	35 97	70 00	September 20, 1856
320	October 20, 1852 .....	1,000 00	13 80	70 00	September 20, 1856
321	October 20, 1852 .....	1,000 00	13 80	70 00	September 20, 1856
324	October 20, 1852 .....	1,000 00	13 80	70 00	September 20, 1856
325	October 20, 1852 .....	1,000 00	13 80	70 00	September 20, 1856
326	October 20, 1852 .....	1,000 00	13 80	70 00	September 20, 1856
329	October 20, 1852 .....	1,000 00	13 80	70 00	September 20, 1856
61	October 25, 1852 .....	250 00	3 20	17 50	October 27, 1856
237	June 1, 1853 .....	100 00		4 08	October 27, 1856
222	January 3, 1853 .....	500 00		34 80	October 13, 1856
223	January 3, 1853 .....	500 00		34 80	October 13, 1856
343	June 14, 1853 .....	500 00		19 15	October 13, 1856
67	July 23, 1852 .....	100 00		7 00	November 25, 1856



These bonds were paid per settlements Nos. 2840, 2843, 3072, 3193, and 3345 of 1856, under the Acts for refunding to the State of California expenses incurred in the suppression of Indian hostilities, approved August 5, 1854, and August 18, 1856, to Charles St. J. Chubb, holder, under decision of the honorable Secretary of War, relating thereto, September 4, 1856. The bonds are on file in this office.

Very respectfully,

E. W. KEIGHTLEY, Auditor.

Hon. John Sherman, Secretary of the Treasury.

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE, }  
WASHINGTON, D. C., January 24, 1883.

SIR: I have the honor to return, herewith, the inclosed bond of the State of California, No. 819, for \$172 56, which you left with me yesterday, and to inform you that, under the Act of Congress, approved March 2, 1861, entitled an "Act for the payment of expenses incurred in the suppression of Indian hostilities in the State of California" the sum of \$400,000, or so much thereof as should be necessary, was appropriated.

Under the second section of said Act the Third Auditor was authorized and required to audit the accounts of said State who filed her claims in this office in August, 1861, amounting to \$449,605 74.

In the first of April, 1863, the Auditor completed his examination of the claims filed, and made an award of \$229,987 67, which was referred to the Hon. Secretary of the Treasury on the seventh of June, 1863, and was returned by him on the fifteenth of June, 1863, authorizing a settlement to be made.

The Auditor, under date of June 16, 1863, reported a settlement to the Second Comptroller for \$229,987 67, who returned the same June 17, 1863, confirming the action of the Third Auditor—and a warrant, No. 8591, dated June 26, 1863, was issued by the Secretary of the Treasury ordering draft for \$229,987 67 to be sent to the Treasurer of the State of California.

On the twenty-eighth of September, 1863, a further sum of \$542 09 was allowed and paid to the State, and the balance of the appropriation, \$169,470 24, was carried to the surplus fund on the books of the Treasury June 30, 1864.

The balance of the claims, \$219,075 98, which were disallowed on the examination by the accounting officers, being excessive charges above the rates paid by the United States during the time and at the place where these expenses were incurred, is barred from further action by this office, as there is no statute now in force which will authorize the accounting officers to further examine the claims of the State of California.

I am, very respectfully,

E. W. KEIGHTLEY, Auditor.

Hon. J. H. Slater, United States Senate, Washington, D. C.

#### EXHIBIT No. 19.

Is a large bound book now in the Governor's office.

#### EXHIBIT No. 20.

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE, }  
WASHINGTON, D. C., August 18, 1885.

SIR: I return the California Indian war bonds recently presented by you as attorney for that State and which you informed me the State redeemed and now holds as owner. The balance of the appropriation made by the Act of August 5, 1854, and which by the Act of August 18, 1856, was made applicable to the payment of the bonds issued by California, was long ago covered into the Treasury *under the provisions of the "Surplus Fund" law*, three years having lapsed without any call therefor. With the termination of the appropriation ended the jurisdiction of the accounting officers to audit any claims based upon such bonds. The Act of June 20, 1874, amended by the Act of June 14, 1878, has no relation to appropriations terminating by operation of the Surplus Fund Act; hence the authority given by the Acts of 1874 and 1878 to the accounting officers to audit claims for which appropriations have ceased to be available, has no application to the case of these bonds. As new legislation by Congress would be necessary to enable any action, I think it advisable that this office should not undertake the custody of such valuable papers until it shall have some jurisdiction by law in regard to them. I return also sundry other documents and accounts presented by you with the bonds, being bills for expenses incurred by the State, certificates of unpaid balances on warrants drawn by the State Controller upon the State Treasury, etc. Even if the appropriation made by Act of August 5, 1854, were still alive, I do not perceive that under the provisions of the Act of August 18, 1856, it would be available for any purpose other than the payment of bonds.

Very respectfully,

JNO. S. WILLIAMS, Auditor.

Capt. John Mullan, No. 1310 Connecticut Ave., Washington, D. C.

WASHINGTON, D. C., January 15, 1886.

I hereby certify that the foregoing is a full, true, and correct copy of the original letter which was sent me by the Treasury Department, which has by me been submitted to the Chairman of the Committee on Appropriations in the Senate to accompany Senate Bill No. 993, introduced by Senator Stanford.

#### EXHIBIT No. 21.

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE, }  
WASHINGTON, D. C., November 23, 1883.

I return the papers recently presented by you as a supplemental claim by the State of California, under the Act of Congress, approved March 2, 1861, appropriating \$400,000 for the payment of expenses incurred by the State in the suppression of Indian hostilities in the years 1854-55-56-58-59.

The balance of that appropriation, long since became liable by law to be carried back into the Treasury under the provisions of the Surplus Fund Act, and was so carried back. The lapsing of the appropriation, terminated the authority of the Third Auditor to audit claims against it.

Moreover, the claims which you recently presented, do not appear to

come within the class for which the appropriation was made. The only expeditions in 1859, to which the Act of March 2, 1861, related, were the "Klamath and Humboldt expeditions of 1858 and 1859," and the "Pitt River expedition of 1859." The expedition of Captain Jarboe's Company at Eel River, Mendocino County, in 1859, does not seem to have been one of the two described above.

The Act authorized only the payment of the expenses of the States, incurred in suppressing certain Indian hostilities; it made no provision for the expense of the Commission which was appointed by the State to come to this city to urge upon Congress the propriety of providing for the payment of the war debt of the State.

I have no authority to consider the claims presented by you, and therefore return the papers.

Very respectfully,

JOHN S. WILLIAMS, Auditor.

Captain John Mullan, 1310 Connecticut Avenue, Washington, D. C.

### EXHIBIT No. 22.

#### INDIAN WAR BONDS—CONTROLLER'S REPORT.

CONTROLLER'S OFFICE, }  
SACRAMENTO, May 27, 1878. }

To his Excellency WILLIAM IRWIN, Governor of California:

SIR: In conformity with your request, made under the authority of Assembly Joint Resolution No. 73, adopted March 30, 1878, which reads as follows:

*Resolved by the Assembly of the State of California, the Senate concurring, First, that our Senators be instructed, and our Representatives requested, to urge upon Congress the immediate payment of all bonds, coupons, and certificates of coupons issued by the State of California, for expenses incurred in the Indian wars, which have not been paid by the General Government; Second, that his Excellency, the Governor, be requested to cause a statement of all such bonds, certificates, and coupons, and the circumstances connected therewith, to be prepared by the Controller, and, upon such statement being prepared, to cause an application to be made to Congress, in the name of the State of California, for the payment of said bonds, coupons, and certificates; Third, and that he forward a copy of these resolutions to each of our Senators and Representatives in Congress.*

—I have the honor to make the following statement:

I find, upon examination of War Bond Register in State Treasurer's office, and other records in Controller's office, that, under the Act of the Legislature of California, approved February 15, 1851 (Statutes 1851, page 520), Indian war bonds were issued by the State of California to the amount of \$200,000, bearing interest at the rate of twelve per cent per annum, and payable in ten years; that, under the Act of the Legislature of May 3, 1852 (Statutes of 1852, page 59), Indian war bonds were issued by the State of California to the amount of \$638,100, bearing interest at the rate of seven per cent per annum, and payable in ten years.

Of the principal of the above named bonds of 1851, amounting to \$200,000, I find, according to printed report of William Theodore Van Doren, Clerk Third Auditor's office, Washington, made January 10, 1872 (see Appendix to Journal of California Senate and Assembly, for the nineteenth session, pages 28 and 29), that the United States Government has paid \$197,000;

that of the principal of the above named bonds of 1852, amounting to \$638,100 (according to said report of William Theodore Van Doren, above referred to), the United States Government has paid \$598,450; that of the principal of the last named bonds the State of California (according to Controller's books), has paid \$22,850, leaving outstanding of the principal of the bonds of 1851, \$3,000; of the principal of the bonds of 1852, \$16,800; making a total amount of said bonds outstanding of \$19,800, together with interest on the same, which said principal and interest, together with the number and denomination of each of said outstanding bonds, is given in the following table, to wit:

OUTSTANDING SEVEN PER CENT WAR BONDS, 1852.

No.	DATE OF BOND.	Amount.	Interest to May 2, 1862.	Total.
132	October 11, 1852	\$100 00	\$66 91	\$166 91
133	October 11, 1852	100 00	66 91	166 91
134	October 12, 1852	100 00	66 89	166 89
135	October 12, 1852	100 00	66 89	166 89
136	October 12, 1852	100 00	66 89	166 89
137	October 18, 1852	100 00	66 77	166 77
138	October 19, 1852	100 00	66 75	166 75
139	October 23, 1852	100 00	66 67	166 67
140	October 23, 1852	100 00	66 67	166 67
141	October 23, 1852	100 00	66 67	166 67
142	October 25, 1852	100 00	66 63	166 63
143	October 25, 1852	100 00	66 63	166 63
144	October 25, 1852	100 00	66 63	166 63
145	October 25, 1852	100 00	66 63	166 63
146	October 25, 1852	100 00	66 63	166 63
147	October 25, 1852	100 00	66 63	166 63
148	October 27, 1852	100 00	66 59	166 59
149	October 27, 1852	100 00	66 59	166 59
150	October 28, 1852	100 00	66 57	166 57
151	November 1, 1852	100 00	66 51	166 51
152	November 1, 1852	100 00	66 51	166 51
153	November 3, 1852	100 00	66 47	166 47
154	November 13, 1852	100 00	66 28	166 28
155	November 13, 1852	100 00	66 28	166 28
156	November 13, 1852	100 00	66 28	166 28
157	November 16, 1852	100 00	66 22	166 22
158	November 18, 1852	100 00	66 18	166 18
159	November 18, 1852	100 00	66 18	166 18
160	November 22, 1852	100 00	66 10	166 10
161	November 22, 1852	100 00	66 10	166 10
162	November 25, 1852	100 00	66 05	166 05
163	November 25, 1852	100 00	66 05	166 05
219	April 27, 1853	100 00	63 10	163 10
268	August 13, 1853	100 00	63 04	163 04
269	August 13, 1853	100 00	63 04	163 04
270	August 13, 1853	100 00	63 04	163 04
271	August 13, 1853	100 00	63 04	163 04
305	January 19, 1854	100 00	58 20	158 20
306	January 19, 1854	100 00	58 20	158 20
329	March 29, 1854	100 00	56 64	156 64
331	March 31, 1854	100 00	56 60	156 60
332	March 31, 1854	100 00	56 60	156 60
333	March 31, 1854	100 00	56 60	156 60
340	April 12, 1854	100 00	56 39	156 39
341	April 12, 1854	100 00	56 39	156 39
348	April 17, 1854	100 00	56 29	156 29
349	April 17, 1854	100 00	56 29	156 29
353	April 25, 1854	100 00	56 14	156 14
354	April 25, 1854	100 00	56 14	156 14
355	April 25, 1854	100 00	56 14	156 14
356	April 25, 1854	100 00	56 14	156 14
371	May 13, 1854	100 00	55 85	155 85
372	May 13, 1854	100 00	55 85	155 85

## OUTSTANDING SEVEN PER CENT WAR BONDS, 1852—Continued.

No.	DATE OF BOND.	Amount.	Interest to May 2, 1862.	Total.
373	May 13, 1854.....	\$100 00	\$55 85	\$155 85
374	May 13, 1854.....	100 00	55 85	155 85
380	May 26, 1854.....	100 00	55 53	155 53
381	May 26, 1854.....	100 00	55 53	155 53
383	June 6, 1854.....	100 00	55 53	155 53
384	July 10, 1854.....	100 00	54 67	154 67
386	July 21, 1854.....	100 00	54 47	154 47
390	August 7, 1854.....	100 00	54 15	154 15
391	August 11, 1854.....	100 00	54 07	154 07
394	August 19, 1854.....	100 00	53 92	153 92
398	September 2, 1854.....	100 00	53 67	153 67
401	October 23, 1854.....	100 00	52 68	152 68
402	October 24, 1854.....	100 00	52 66	152 66
403	November 24, 1854.....	100 00	52 08	152 08
404	November 24, 1854.....	100 00	52 08	152 08
405	November 24, 1854.....	100 00	52 08	152 08
406	November 24, 1854.....	100 00	52 08	152 08
407	November 24, 1854.....	100 00	52 08	152 08
409	April 4, 1855.....	100 00	49 54	149 54
413	July 28, 1855.....	100 00	47 33	147 33
416	August 1, 1855.....	100 00	47 27	147 27
417	August 13, 1855.....	100 00	47 04	147 04
418	August 13, 1855.....	100 00	47 04	147 04
419	August 13, 1855.....	100 00	47 04	147 04
420	August 13, 1855.....	100 00	47 04	147 04
Totals.....		\$7,800 00	\$4,641 56	\$12,441 56

## OUTSTANDING SEVEN PER CENT WAR BONDS, 1852.

No.	DATE OF BOND.	Amount.	Interest to May 2, 1862.	Total.
69	November 25, 1852.....	\$250 00	\$165 14	\$415 15
113	February 3, 1854.....	250 00	144 33	394 33
128	July 10, 1854.....	250 00	136 70	386 70
129	July 21, 1854.....	250 00	136 15	386 15
130	July 21, 1854.....	250 00	136 15	386 15
134	July 21, 1854.....	250 00	136 15	386 15
135	July 21, 1854.....	250 00	136 15	386 15
136	July 21, 1854.....	250 00	136 15	386 15
139	August 24, 1854.....	250 00	134 55	384 55
141	August 26, 1854.....	250 00	134 45	384 45
142	August 26, 1854.....	250 00	134 45	384 45
143	August 26, 1854.....	250 00	134 45	384 45
145	September 14, 1854.....	250 00	133 58	383 58
146	September 14, 1854.....	250 00	133 58	383 58
151	October 18, 1854.....	250 00	131 93	381 93
152	October 24, 1854.....	250 00	131 64	381 64
153	October 24, 1854.....	250 00	131 64	381 64
154	October 24, 1854.....	250 00	131 64	381 64
155	October 24, 1854.....	250 00	131 64	381 64
156	October 24, 1854.....	250 00	131 64	381 64
160	August 1, 1855.....	250 00	118 17	368 17
161	August 1, 1855.....	250 00	118 17	368 17
162	August 1, 1855.....	250 00	118 17	368 17
163	August 15, 1855.....	250 00	117 50	367 50
164	May 18, 1856.....	250 00	104 23	354 23
166	May 18, 1856.....	250 00	104 23	354 23
167	May 18, 1856.....	250 00	104 23	354 23
168	May 18, 1856.....	250 00	104 23	354 23
Totals.....		\$7,000 00	\$3,611 04	\$10,611 04

## OUTSTANDING SEVEN PER CENT WAR BONDS, 1852.

No.	DATE OF BOND.	Amount.	Interest to May 2, 1862.	Total.
186	November 29, 1852.....	\$500 00	\$329 87	\$829 87
307	May 14, 1853.....	500 00	313 83	813 83
416	May 13, 1854.....	500 00	278 92	778 92
420	July 10, 1854.....	500 00	273 38	773 38
Totals.....		\$2,000 00	\$1,196 00	\$3,196 00

Interest calculated from date of bond to May 2, 1862.

## OUTSTANDING TWELVE PER CENT WAR BONDS, 1851.

(Act of February 15, 1851.)

No.	DATE OF BOND.	Amount.	Interest to Feb. 15, 1861.	Total.
107	April 9, 1851.....	\$1,000 00	\$1,182 00	\$2,182 00
108	April 9, 1851.....	1,000 00	1,182 00	2,182 00
142	May 24, 1851.....	1,000 00	1,167 00	2,167 00
Totals.....		\$3,000 00	\$3,531 00	\$6,531 00

Interest calculated from date of bond to February 15, 1861.

Interest and principal on bonds of 1852—\$100 each.....		\$12,441 56
Interest and principal on bonds of 1852—\$250 each.....		10,611 04
Interest and principal on bonds of 1852—\$500 each.....		3,196 00
Interest and principal on bonds of 1851—\$1,000 each.....		6,531 00
Total.....		\$32,779 60

On August 5, 1854 (United States Statutes at Large, Volume X, page 583), Congress passed a bill appropriating money to defray expenses incurred by the State of California in suppressing Indian hostilities. Section 3 of said bill reads as follows:

SECTION 3. *And be it further enacted*, That the Secretary of War be and he is hereby authorized and directed to examine into and ascertain the amount of expenses incurred by the State of California in the suppression of Indian hostilities within the said State prior to the first day of January, A. D. 1854, and that the amount of such expenses, when so ascertained, be paid into the Treasury of said State; *provided*, that the sum so paid shall not exceed in amount the sum of \$924,259 65, which amount is hereby appropriated out of any moneys in the Treasury not otherwise appropriated.

Could the above appropriation of \$924,259 65 have been made immediately available, it would have paid up in full, principal and interest, the said bonds under Acts of 1851 and 1852, issued prior to January 1, 1854; but owing to the ruling of the honorable Secretary of War, to the effect that the vouchers upon which the said bonds were issued would have to be presented for examination to the War Department at Washington, delay was caused, the result of which was that before the bondholders received their money some two years and eight months elapsed, and the interest coupons from January 1, 1854 (the date to which interest was paid on bonds redeemed by the United States Government, bearing date prior to January 1, 1854), to September 1, 1856, and amounting to \$173,322 66, were cut from the said redeemed bonds and returned to the respective holders of said bonds so presented for redemption; which will more fully

and at large appear by reference to reports made to the Governor of California by Samuel B. Smith and J. W. Denver, Commissioners California War Debt, which reports bear date, respectively, January 5, 1857, and January 30, 1860. (See Appendix to Journals of Senate and Assembly, 19th Session, pages 10, 11, 12, 13.)

Included in the \$638,100 of the seven per cent bonds, first herein described, are bonds bearing date after said first day of January, 1854, which were issued under the said Act of 1852, and Acts amendatory thereof—a large number of which, both principal and interest, have been paid in full by the United States Government—said government thus acknowledging, to the fullest extent, the validity of the issue of bonds of later date than January 1, 1854, and the obligation of the General Government to pay the same; all of which will more fully appear by reference to the records of the United States War Department.

The Commissioners of California War Debt give the amount of the detached interest coupons, above alluded to, as \$172,828 54. I make it \$173,322 66, as follows:

Interest on \$197,000, bonds of 1851, for thirty-two months, at 12 per cent per annum .....	\$63,040 00
Interest on \$590,800, bonds of 1852, for thirty-two months, at 7 per cent per annum .....	110,282 66
Total .....	\$173,322 66

The Joint Committee of Senate and Assembly, nineteenth session, in a report made February 21, 1872, make the principal of bonds outstanding as follows:

Outstanding principal of bonds under Act of 1851 .....	\$3,000 00
Outstanding principal of bonds under Act of 1852 .....	14,700 00
Total .....	\$17,700 00

Which is not the true amount. The committee fell into an error by assuming the whole issue under Act of 1852, to be \$636,350, when it should have been \$638,100—thus ignoring an issue of \$1,750 made in 1855 and 1857, under said Act of May 2, 1852; and then they say the State paid of said bonds, principal, \$23,200, when, in fact, the State only paid as principal on said bonds the sum of \$22,850; the balance paid by the State as principal was \$350 (making \$23,200 paid as principal on said bonds by the State, as appears by record in Controller's office), which was paid to redeem Bond No. 39, for \$250, and Bond No. 343, for \$100, both of which had been previously paid by the General Government, which latter amount of \$350, of course, did not diminish the amount of bonds outstanding. And as we have seen that bonds were issued to the amount of \$1,750 in excess of the amount given by said joint committee, and \$350 less was used by the State to pay principal of said bonds than was stated by said joint committee, consequently there were less bonds redeemed by the State, by the amount of \$350, than stated by said joint committee, and more issued by the State, by \$1,750 (than stated by said committee); and, therefore, there are bonds outstanding, issued under the Act of May 2, 1852, amounting to \$2,100 more than said joint committee report; or, in other words, there are of said bonds of 1852, outstanding (principal), \$16,800, instead of \$14,700, making, with the bonds of 1851, \$19,800 now outstanding, which said bonds, by numbers, date, and denomination, are given in another part of this communication.

To sum up, the account in tabular form is as follows:

Bonds of 1851 outstanding (principal) .....	\$3,000 00
Interest on same from date to maturity .....	3,531 00
Bonds under Act of 1852 outstanding (principal) .....	16,800 00
Interest on the same from date of bond to May 2, 1862, time of maturity .....	9,448 60
Coupons outstanding, cut from bonds of 1851, redeemed by United States Government, said coupons being for interest on said bonds from January 1, 1854, to September 1, 1856 .....	63,040 00
Coupons outstanding, cut from bonds of 1852, redeemed by United States Government, said coupons being for interest on said bonds from January 1, 1854, to September 1, 1856 .....	110,282 26
Total amount of bonds, principal and interest, outstanding .....	\$206,102 26

To which amount is to be added the amount of principal and interest of said bonds under Act of May, 1852, paid by the State of California—\$35,523 56—making the sum of \$241,625 82 for which the General Government is justly liable to the State.

All of which is respectfully submitted.

W. B. C. BROWN, Controller.

### EXHIBIT No. 22½.

OFFICE OF CALIFORNIA STATE AGENT, 1310 CONNECTICUT AVENUE, }  
WASHINGTON, January 20, 1885. }

Hon. GEORGE STONEMAN, Governor of California:

DEAR SIR: I have the honor to transmit you herewith a printed "statement in relation to the California Indian war debt, and of bonds in payment thereof, issued by said State under the Acts of her Legislature, approved February 15, 1851, and May 3, 1852," which I have carefully compiled and which is intended to fully show the exact status of this subject-matter up to January 1, 1885.

In accordance with the summary contained on page 10 thereof, Hon. Barclay Henley, at my request, on the nineteenth day of January, 1885, introduced in the House H. R. No. 7975, which has been referred to the House Committee on War Claims, copy of which is as follows, to wit:

Forty-eighth Congress, second session. H. R. 7975.

### A BILL

*To indemnify the State of California on account of indebtedness incurred by her in the Indian wars therein, and which has heretofore been paid by said State.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be and he is hereby authorized and directed to pay to the State of California, or to her duly authorized agent, the sum of money heretofore paid by the State of California in the redemption of the Indian war bonds issued by said State under the Acts of her Legislature, approved February 15, 1851, and May 3, 1852, and of the certificates of indebtedness issued in connection therewith, on account of the suppression of Indian hostilities in said State, prior to January 1, 1854; and which bonds and certificates have*

heretofore been redeemed and paid by said State, together with interest thereon at six per cent per annum from the dates of such payments by said State to the dates of the payment thereof by the United States; *provided*, that the sum to be so paid by the United States to said State for the matters herein contained shall not exceed one hundred and ten thousand nine hundred and forty-seven dollars and thirty-eight cents, which amount is hereby appropriated out of any money in the Treasury not otherwise appropriated, and to be paid to said State upon the surrender by her, or by her duly authorized agent, of said bonds and of said certificates of indebtedness to the Treasury Department of the United States.

Hon. Barclay Henley and Hon. P. B. Tully have secured for me a satisfactory interview on this matter with Hon. G. W. Geddes, Chairman of the House Committee on War Claims, and Mr. Geddes promised to see his committee in order that I should be heard before them on this subject at a full meeting thereof, to be called at an early date.

In this connection permit me to suggest that you should at once lay before the Legislature this matter in so far as it relates to that portion of said debt not heretofore paid, either by the State of California or by the United States, though assured and promised to be paid by said State, with a recommendation that due provision of law should be made to pay the same.

I am of the opinion that the United States will in due time refund and repay to the State of California so much of said debt as the State herself has heretofore assumed and by her heretofore paid, but I am equally of the opinion that the United States will not assume nor pay any portion of said debt which the State of California herself has assumed and not heretofore by her paid.

I am also of the opinion if the State of California would pay the remaining portion of said debt which she has assumed and promised to pay, to wit: the sum of \$203,856 47, either in cash or in bonds, that the United States would thereafter refund the same to her.

I, therefore, take the liberty to suggest to you that you would lay this entire subject-matter before the Legislature at its present session, and in a special message, for such action as it may feel disposed to take in these premises.

It is due to the history of this subject-matter to call your attention to the fact that nearly every Governor of California since 1854 has brought this subject to the attention of the Legislature of the State, and with the recommendation that the State of California should pay this debt by her heretofore assumed and by her promised to be paid, and thereafter let the State present her claim to the proper authorities of the United States for reimbursement and payment.

I therefore suggest a bill to cover the foregoing proposition, and of the form as follows, to wit:

#### A BILL

*To redeem and pay so much of the California Indian war debt arising under the Acts of her Legislature, approved February 15, 1851, and May 3, 1852, as has not been heretofore paid by either the State of California or by the United States.*

*The People of the State of California, represented in Senate and Assembly, do enact as follows:*

SECTION 1. The following sums are hereby appropriated out of any money in the Treasury not otherwise appropriated:

For the redemption and payment of California Indian war bonds, numbered 107, 108, and 142, for \$1,000 each, issued under the Act of February 15, 1851, with interest on each thereof from the date of issuance of each up to February 15, 1861, the date of maturity thereof, \$6,531.

For the redemption and payment of California Indian War Bonds, numbered 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 219, 268, 269, 270, 271, 305, 306, 329, 331, 332, 333, 340, 341, 348, 349, 353, 354, 355, 356, 371, 372, 373, 374, 380, 381, 383, 384, 386, 390, 391, 394, 398, 401, 402, 403, 404, 405, 406, 407, 409, 413, 416, 417, 418, 419, and 420, for \$100 each, issued under the Act of May 3, 1852, with interest on each thereof from the date of issuance of each up to May 3, 1862, the date of maturity thereof, \$12,442 56.

For the redemption and payment of California Indian war bonds, numbered 69, 113, 128, 129, 130, 134, 135, 136, 139, 141, 142, 143, 145, 146, 151, 152, 153, 154, 155, 156, 160, 161, 162, and 163, for \$250 each, issued under the Act of May 3, 1852, with interest on each thereof from the date of issuance of each up to May 3, 1862, the date of maturity thereof, \$9,194 12.

For the redemption and payment of California Indian war bonds, numbered 307, 416, and 420, for \$500 each, issued under the Act of May 3, 1852, with interest on each thereof from the date of issuance of each up to May 3, 1862, the date of maturity thereof, \$2,366 13.

For the redemption and payment of interest on California Indian war bonds, issued under the Act of February 15, 1851 (represented by coupons detached from said bonds, and which coupons were returned to the holders of said bonds and not paid), from January 1, 1854, to September 1, 1856, \$63,040.

For the redemption and payment of interest on bonds issued under the Act of May 3, 1852 (represented by coupons detached from said bonds, and which coupons were returned to the holders of said bonds and not paid), from January 1, 1854, to September 1, 1856, \$110,282.

SEC. 2. The State Treasurer is hereby authorized to pay the aforesaid sums on account of the redemption of said bonds and said coupons, upon warrants to be drawn therefor by the State Controller, to whom the said bonds and the said coupons shall be surrendered by the holders thereof; and upon such surrender the Controller shall cancel the same, and when so canceled he shall deliver each bond and each coupon to the Governor of this State, who shall immediately thereafter cause the same, together with all papers relating thereto, to be forwarded to Captain John Mullan, State Agent for California at Washington City, D. C., who is hereby authorized to present the same to the proper authorities of the United States, and secure their redemption and payment.

SEC. 3. The Governor, State Controller, and State Treasurer shall each keep in their offices a special book, in which shall be recorded all transactions by them respectively had under this Act, and they shall each report fully thereon to the Legislature at its next session, and at every subsequent session, until all the matters herein contained are finally adjusted between the State of California and the United States.

SEC. 4. This Act shall take effect immediately.

I am, sir, your obedient servant,

JOHN MULLAN,  
State Agent for California.

STATEMENT IN RELATION TO THE CALIFORNIA INDIAN WAR DEBT, AND OF BONDS IN PAYMENT THEREOF, ISSUED BY SAID STATE UNDER THE ACT OF HER LEGISLATURE, APPROVED FEBRUARY 15, 1851, AND MAY 3, 1852.

OFFICE OF THE STATE AGENT OF THE STATE OF CALIFORNIA,  
No. 1310 CONNECTICUT AVENUE,  
WASHINGTON CITY, D. C., December 15, 1884.)

STATEMENT

In relation to the California Indian war debt and of bonds issued by the authority of the Legislature of the State of California in liquidation of and payment for the expenses incurred by said State for the common defense, to wit: suppressing Indian hostilities that arose prior to January 1, 1854, in said State, etc.

I.

On February 15, 1851, the Legislature of the State of California (California Laws 1851, page 520), enacted a law as follows, to wit:

SECTION 1. By virtue of the power given to the Legislature by the Constitution of this State, Article VIII, "In case of war to repel invasion or suppress insurrection," a loan not exceeding five hundred thousand dollars is hereby authorized to be negotiated upon the faith and credit of the State, payable in ten years, and at any period after five years at the pleasure of the State; said loan to bear a rate of interest not exceeding twelve per cent per annum, payable annually or semi-annually at such place as the contracting parties may agree; *provided, however*, that the interest of the first year may be paid in advance out of the loan thus made.

SEC. 2. That the Treasurer be and he is hereby authorized and required to cause suitable bonds to be provided for said loan, in sums not less than one thousand dollars.

SEC. 3. All such bonds shall be signed by the Treasurer in his official character, made payable to and indorsed by the Governor in his official character, who shall affix the seal of the State thereto, and countersigned by the Controller, which bonds executed as aforesaid shall be transferable on delivery, and bind the State for the faithful payment thereof.

SEC. 4. After the bonds aforesaid shall have been countersigned by the Controller it shall be his duty to make a register of the same in a book to be kept for that purpose, with the number and amount thereof, and deliver them to the Treasurer, charging him with the same. The Treasurer shall also keep a register of such bonds as may be negotiated.

SEC. 5. Coupons for the interest shall be attached to each bond, so that they may be removed without injury or mutilation to the bond.

SEC. 6. The Treasurer shall be, and he is hereby authorized, with the approval of the Governor of the State, to negotiate such loan as speedily as possible, at such time and place, and in such amounts as they may determine the exigencies of the State require; but no loan shall be negotiated below the par value thereof.

SEC. 7. Any claim which this State has now, or may hereafter have, upon the General Government for moneys expended out of this loan, for the purpose aforesaid, shall be and the same is hereby set apart and pledged for the payment of the principal and interest arising upon said bonds, together with all other moneys in the Treasury not otherwise appropriated, or so much thereof as may be necessary.

SEC. 8. The Treasurer is hereby authorized to defray such expenses as may be incurred in obtaining the above loan; *provided*, that it does not exceed the sum of two thousand dollars, to be paid out of any moneys in the Treasury not otherwise appropriated; *provided*, said loan be negotiated in this State.

II.

On May 3, 1852, said State (California Laws 1852, p. 59), enacted an additional law on the same subject as contained in the foregoing, and which law is as follows, to wit:

SECTION 1. A sum not exceeding six hundred thousand dollars is hereby appropriated and set apart as an additional war fund, payable in ten years, out of any moneys which

may be appropriated by Congress to defray the expenses incurred by the State of California, and interest thereon at the rate of seven (7) per cent per annum, in the suppression of Indian hostilities, or out of the proceeds of the sale of any public lands which may be donated or set aside by Congress for that purpose; and should no such appropriation or donation be made, or if an amount sufficient should not be appropriated or donated within the said ten years, then the bonds authorized to be issued by this Act shall be good and valid claims against the State, and shall be paid out of any moneys in the Treasury not otherwise appropriated to pay the expenses of the expeditions mentioned in this Act.

SEC. 2. Such liabilities as have been incurred allowed as provided by law, or may be allowed by the Board of Examiners for the Mariposa expedition, also such accounts as have been or may be allowed under legislative authority, for the second El Dorado, Utah, Los Angeles, Clear Lake, Klamath and Trinity, and Monterey expeditions against the Indians, shall be funded or paid in bonds bearing seven per cent interest per annum, from the date of issuing the same.

SEC. 3. All accounts heretofore examined and allowed by the Board of Examiners, consisting of the Treasurer and Controller of State, and all other accounts of claims for services and supplies rendered in the foregoing campaigns which have been examined and allowed by either branch of the present Legislature, and as shown by the payrolls and abstracts accompanying the same, or which may not have been so examined and allowed, shall by said Board be again examined, where warrants have not been issued, and if allowed, it is hereby made the duty of the Controller to issue his warrant on the Treasurer in favor of the person holding the claim so allowed, payable out of the war bonds, and the Treasurer shall, on presentation of such warrant, therefor exchange the bonds provided to be created by a preceding section of this Act.

SEC. 4. In the examination herein required to be made by the Controller and Treasurer, they are hereby fully empowered, whenever or wherever any mistake may be detected by them against the State, in the allowance which may have been made by either branch of the Legislature to claimants, to correct the same, by a proper reduction thereof, and in the allowance to be made of claims which have not been examined, they shall have power, and are hereby required to pay to officers and privates, the same as is allowed by the Act of March seventeenth, eighteen hundred and fifty-one, providing for the defense of the eastern frontier against the Indians, and shall limit their payment for supplies to the prices at which like articles were worth at the date of such purchase in the neighborhood were made.

SEC. 5. The State Treasurer is hereby authorized and required to cause suitable bonds to be provided for said payments, in sums of one hundred, two hundred and fifty, five hundred, and one thousand dollars each.

SEC. 6. All such bonds shall be signed by the Treasurer in his official character, made payable to and indorsed by the Governor in his official character, who shall affix the seal of the State thereto, and countersigned by the Controller, which bonds, executed as aforesaid, shall be transferable by assignment on the bonds, by the owner thereof or by his attorney in fact, and bind the State for the faithful payment thereof.

SEC. 7. After the bonds shall have been countersigned by the Controller, it shall be his duty to make a register of the same in a book to be kept for that purpose, with the number and amount thereof, and deliver them to the Treasurer, charging him with the same. The Treasurer shall also keep a register of such bonds.

SEC. 8. Coupons for the interest shall be attached to each bond, so that they may be removed without injury or mutilation to the bond.

SEC. 9. Any claim which the State has now, or may hereafter have, upon the General Government, for moneys expended for the purposes aforesaid, shall be and the same is hereby set apart and pledged for the payment of the principal and interest arising upon said bonds.

SEC. 10. The Treasurer is hereby authorized to defray such expenses as may be incurred in obtaining the blanks for said bonds; *provided*, that they do not exceed the cost of one thousand dollars, to be paid out of any moneys in the Treasury not otherwise appropriated.

SEC. 11. The Treasurer shall deliver the bonds to claimants whenever demanded by them in person or by legal agent.

SEC. 12. Whenever the Treasurer shall derive a sufficient sum from the tax herein provided to be levied, he shall make certain arrangements for the payment of the interest of the war bonds, and shall advertise for three months at least, in some newspaper in Sacramento City and San Francisco, notifying holders of bonds when interest will be paid at the State Treasury.

SEC. 13. An Act authorizing the Treasurer of the State to negotiate a loan upon the faith and credit of the State, for the purpose of defraying the expenses which have been and may be incurred in suppressing Indian hostilities in the State, in the absence of adequate provision being made by the General Government, passed February fifteenth, eighteen hundred and fifty-one; also, an Act passed March seventeenth, eighteen hundred and fifty-one, entitled "An Act authorizing the Governor to call out troops to defend our frontier, and providing for their pay and compensation," be and the same is hereby repealed; *provided*, the repeal in nowise affect the War Loan Bonds already issued under the provisions of the Act so repealed.



## III.

Under the aforesaid State statute of February 15, 1851, the State of California issued interest-bearing bonds in the aggregate sum of \$200,000, and under the said State statute of May 3, 1852, said State issued other interest-bearing bonds in the aggregate sum of \$638,100.

On or about January 1, 1854, the State of California submitted to Congress a partial statement of the expenses she had so authorized and incurred, and liabilities she had so assumed, and for which she had up to January 1, 1854, issued interest-bearing bonds as provided for in said laws, all issued under the two aforesaid Acts of her Legislature, and which bonds, with interest represented by coupons attached thereto, and calculated only up to *January 1, 1854*, aggregated the sum of \$924,259 65.

Thereafter, to wit, on August 5 1854, (U. S. Stats., vol. 10, pp. 582, 583), Congress appropriated said sum of \$924,259 65 to defray the partial expenses so presented by the State of California, and then actually paid by said State and as calculated in the manner aforesaid, for suppressing Indian hostilities therein, and represented by bonds bearing date prior to January 1, 1854, and which Act of Congress is as follows, to wit:

SEC. 9. *And be it further enacted*, That the Secretary of War be and he is hereby authorized and directed to examine into and ascertain the amount of expenses incurred and now actually paid, by the State of California, in the suppression of Indian hostilities within the said State prior to the first of January, Anno Domini eighteen hundred and fifty-four, and that the amount of such expenses, when so ascertained, be paid to the Treasury of said State; *provided*, that the sum so paid shall not exceed in amount the sum of nine hundred and twenty-four thousand two hundred and fifty-nine dollars and sixty-five cents; which amount is hereby appropriated out of any moneys in the Treasury not otherwise appropriated.

Subsequent to the passage of said Act of Congress of August 5, 1854, there arose some serious questions in these premises between the authorities of the State of California and those of the United States, and especially as to *whom* and *how* said sum of \$924,259 65 so appropriated by Congress should be paid.

For the purpose of adjusting and specifically defining this matter, on August 18, 1856 (U. S. Stats., vol. 11, p. 91), Congress enacted a second law in regard to and explanatory of its original intention on this same subject-matter, and in which last law the Secretary of War was directed to pay said sum so appropriated in the Act of August 5, 1854, to wit, of \$924,259 65, *to the holders of said bonds*, and which Act of Congress of August 18, 1856, is as follows, to wit:

\* \* \* \* \*

SEC. 8. *And be it further enacted*, That the Secretary of War is hereby authorized and directed to pay to the holders of the war bonds of the State of California the amount of money appropriated by Act of Congress approved May [August] fifth, eighteen hundred and fifty-four, "in payment of expenses incurred and now actually paid by said State of California for the suppression of Indian hostilities within the said State prior to the first day of January, Anno Domini eighteen hundred and fifty-four, under the following restrictions and regulations: Before any bonds shall be redeemed by the Secretary of War, they shall be presented to the Board of Commissioners appointed by the Legislature of said State by an Act approved April nineteenth, eighteen hundred and fifty-six, and the amount due and payable upon each bond be indorsed thereon by said Commission. Upon presentation to the Secretary of War of any bond or bonds thus indorsed, it shall be his duty to draw his warrant in favor of the holder or holders thereof for the amount certified to be due upon the same by said Commissioners, upon the Secretary of the Treasury, who is hereby directed to pay the same; *provided*, that said amounts in the aggregate shall not exceed the amount of money appropriated by Act of Congress approved August fifth, eighteen hundred and fifty-four; said bonds, after redemption, and after taking off the coupons that remain unpaid, shall be delivered to the Secretary of War to be canceled."

This appropriation of \$924,259 65 made by Congress on August 5, 1854, was based exclusively upon the amount of California Indian war claims which the proper authorities of that State had presented January 1, 1854, for the consideration of and payment by the United States, and which her own officials had examined, audited, and allowed, with interest calculated up to January 1, 1854, and for which amount interest-bearing bonds had been issued by said State prior to *January 1, 1854*. The aforesaid Act of August 18, 1856, simply defined specifically the parties *to whom* the money so appropriated on August 5, 1854, should be then paid. The only difference between the two aforesaid Acts of August 5, 1854, and August 18, 1856, being as follows, to wit: Under the Act of August 5, 1854, the sum appropriated was by the executive departments of the United States declared to be payable only to the *State of California*, while under the Act of August 18, 1856, said sum was declared specifically by Congress to be paid direct to the *holders of the aforesaid bonds*, and as issued by the State of California, in the manner and at the dates aforesaid.

But there were similar and other expenses which had been incurred by the State of California prior to January 1, 1854, but the claims for which were not presented by the individual claimants to the State authorities of California until after January 1, 1854, and hence not examined or audited or allowed or calculated for by said State authorities until at dates subsequent to January 1, 1854, but the payment of all of which had been provided for by the two aforesaid Acts of the Legislature of California of February 15, 1851, and May 3, 1852. For the liquidation of these last expenses when so presented, examined, and allowed, the proper State authorities under the two aforesaid Acts of the Legislature of California issued *other interest-bearing bonds*, and all of which bonds necessarily bore date *subsequent* to January 1, 1854.

Payment of all the bonds so issued by said State subsequent to January 1, 1854, and of the coupons attached thereto, was refused by the U. S. Treasury Department and continued to be by it refused until June 23, 1860, and because that department, in conjunction with the War Department of the United States, on September 1, 1856, held that the legislation of Congress as contained in its two aforesaid Acts of August 5, 1854, and August 18, 1856, limited the U. S. Treasury Department to the redemption of California Indian war bonds that had been issued by the State authorities of said State prior to January 1, 1854, and also limited and restricted that department when paying interest earned by said bonds to the payment of such interest only as had been earned and as had accrued prior and up to January 1, 1854, *but not subsequent to such date*. The U. S. Treasury and War Departments held that said legislation of Congress of August 5, 1854, and August 18, 1856, did not apply to any bonds bearing date *subsequent* to January 1, 1854, or to any interest earned thereon *subsequent* to January 1, 1854, or to any bonds issued or to any interest whatsoever earned *subsequent* to January 1, 1854, notwithstanding the fact was and is that the bonds issued prior to January 1, 1854, were not redeemed by the United States until September 1, 1856, and notwithstanding said interest-bearing bonds issued subsequent to January 1, 1854, were all issued in liquidation and payment of expenses that had been necessarily incurred by said State prior to January 1, 1854, and all issued by said State in liquidation of expenses similar in all respects to those for which said State had issued bonds prior to January 1, 1854, and all of which last named bonds with interest up to January 1, 1854, have been paid by the U. S. Treasury Department, except as hereinafter stated.

The partial claim presented to Congress by the State of California on or

about January 1, 1854, for the expenses incurred by said State for the suppression of Indian hostilities therein prior to January 1, 1854, was represented by bonds and coupons which had been issued by said State prior to January 1, 1854, in full adjustment and in full liquidation of said expenses, in so far as the same had been then presented and examined, audited and allowed by said State prior to January 1, 1854, and not otherwise.

But the claim so then presented by the State of California to the United States was partial only, and did not represent and did not include, and was not then intended to represent or to include the whole of the indebtedness that California had necessarily incurred prior to January 1, 1854, on account of the aforesaid expenses and liabilities. On the contrary, there were other and additional expenses which had been necessarily incurred by the State of California prior to January 1, 1854, but the claims for which had not been presented by her citizens to the proper State authorities of said State, and hence by the latter not examined or audited, or adjusted, or allowed until at dates subsequent to January 1, 1854, and for which expenses when presented and by her proper State officials duly examined, audited, and allowed, said State issued other interest-bearing bonds, bearing date subsequent to January 1, 1854, and as authorized by said State under the aforesaid Act of her Legislature of May 3, 1852. The just claims, therefore, in these premises of the State of California, and of the individual holders of her said bonds and coupons as the same now exist, may be itemized as follows, to wit:

*First*—For the redemption and payment to the legal holders thereof by the United States of three outstanding, unredeemed, and unpaid bonds and attached coupons, to wit: Nos. 107 and 108, both issued April 9, 1851, and No. 142, issued May 24, 1851, for \$1,000 each, all three being issued under the aforesaid Act of February 15, 1851, and neither of which bonds has ever heretofore been paid either by the State of California or by the United States, as per tables hereto annexed.

*Second*—For the redemption and payment to the legal holders thereof by the United States of the outstanding, unredeemed, and unpaid bonds and coupons attached thereto, issued under the aforesaid Act of May 3, 1852, and none of which bonds have ever heretofore been paid either by the State of California or by the United States, as per tables hereto annexed.

*Third*—For the redemption and payment to the legal holders thereof by the United States of the outstanding, unredeemed, unpaid, detached coupons earned between January 1, 1854, and September 1, 1856, on which last named date the United States redeemed and paid the bonds issued under both of said Acts, from which all of said coupons had been detached, and none of which coupons have ever heretofore been paid either by the State of California or by the United States, as per tables hereto annexed.

*Fourth*—The payment to the State of California by the United States of the bonds and coupons attached thereto, issued under the Act of May 3, 1852, which have heretofore been redeemed and heretofore paid in cash by the State of California out of her own State Treasury and with her own State funds, but neither of which bonds, nor any thereof, nor the amount representing the same or any part thereof, has ever heretofore been redeemed or paid by the United States, as per tables hereto annexed.

*Fifth*—The payment to the State of California by the United States of the Treasurer's certificates of balances due individual claimants, issued by the State of California and paid by said State, but no portion of which has ever heretofore been reimbursed said State by the United States, as per tables hereto annexed.

*Sixth*—The payment to the State of California by the United States of the expenses necessarily incurred, and paid in cash by the State of California, in having said bonds prepared and issued under the two aforesaid Acts of February 15, 1851, and May 3, 1852, and as provided for therein, but no portion of which has ever heretofore been reimbursed said State by the United States, as per tables hereto annexed.

*Seventh*—The payment to the State of California by the United States of the interest due the State of California by the United States up to January 1, 1885, on the aforesaid payments by said State, as contained in items 4, 5, and 6, between the dates of such payments by said State and the date when the principal shall be refunded by the United States, assumed in this case to be January 1, 1885, and which interest is calculated up to first January, 1885, at the rate of six per centum per annum, as per tables hereto annexed.

Annexed hereto and made a part hereof are tables that are intended to fully and specifically show:

*First*—The aggregate claim of the State of California in these premises.

*Second*—The aggregate claim of the individual holders of her said bonds, with coupons attached thereto.

*Third*—The aggregate claim of the individual holders of the unpaid coupons detached from said bonds paid by the United States, and which coupons represent interest earned by said bonds between January 1, 1854, and September 1, 1856, on which last date said bonds were paid by the United States.

Also annexed hereto and made a part hereof are the tables, which show in detail—

*First*—TABLE A.—The Specific Indian war bonds and coupons attached thereto, issued by said State under the two aforesaid Acts of February 15, 1851, and May 3, 1852, which have not been paid by the State of California, but which have heretofore been paid by the United States up to December 15, 1884.

*Second*—TABLE B.—The Specific Indian war bonds and coupons attached thereto, issued by said State under the aforesaid Acts of February 15, 1851, and May 3, 1852, which have heretofore been paid and redeemed by the State of California, prior to December 15, 1884, but never paid by the United States, and for which and the matters connected therewith the State of California is now fully and justly entitled to be reimbursed by the United States, and with interest thereon at the rate of six per cent per annum, from the dates of such payment by said State up to January 1, 1885.

*Third*—TABLE C.—The Specific Indian war bonds issued by said State, and coupons attached thereto, now outstanding, and none of which have ever, as yet, been paid either by the State of California or by the United States.

*Fourth*—TABLE D.—The amount represented by coupons being for interest earned from January 1, 1854, to September 1, 1856, which coupons on said last date were detached from the bonds issued under the two aforesaid State statutes and returned to the holders of the bonds to which they pertained, and which coupons were left unpaid (while the bonds themselves on first September, 1856, together with coupons for interest earned up to January 1, 1854, were redeemed and paid by the United States), and which detached coupons have never been paid, either by the State of California or by the United States, up to the date of this statement, December 15, 1884.

Appended hereto is also a copy of a letter marked Exhibit E, from the

office of the Third Auditor of the Treasury, dated February 16, 1882, and from which letter it appears that up to January 10, 1872, the United States had paid to the holders of said bonds and coupons the sum of \$914,071 02.

Subjoined hereto is also the additional legislation of Congress, bearing date subsequent to August 18, 1856, on this same subject, and as follows, to wit: on June 23, 1860 (U. S. Stats., vol. 12, p. 104), Congress enacted a law as follows, to wit:

\* \* \* \* \*  
SECTION 4. *And be it further enacted*, That the Secretary of War be and he is hereby authorized to pay out of the unexpended balance of appropriation for the war debt of the State of California, made by the last section of the Act approved August fifth, eighteen hundred and fifty-four, entitled "An Act making appropriation for the support of the army for the year ending the thirtieth of June, eighteen hundred and fifty-five," any outstanding and unpaid bonds and coupons issued by said State for said war debt prior to the passage of said Act, but bearing date subsequent to the first day of January, eighteen hundred and fifty-four; *provided*, that no payment shall be made beyond the unexpended amount of said appropriation now remaining in the Treasury." \* \* \* \* \*

And again, on July 25, 1868 (U. S. Stats., vol. 15, p. 175), Congress enacted a law as follows, to wit:

\* \* \* \* \*  
To reappropriate an unexpended balance of an appropriation made by Act approved August fifth, eighteen hundred and fifty-four, "to refund to the State of California expenses incurred in suppressing Indian hostilities," said balance having lapsed and been covered into the Treasury on the thirtieth of June, eighteen hundred and sixty-three, ten thousand one hundred and eighty-three dollars and sixty-three cents; *provided*, that nothing shall be paid except subject to existing provisions of law, and upon the finding and certificate of the Third Auditor that the same is actually due.

Under these two laws the United States paid one \$500 bond, to wit, No. 186, issued November 29, 1852, under the aforesaid Act of May 3, 1852, principal and interest of which, represented by earned coupons, aggregated the sum of \$538 11.

Again, Congress, on March 3, 1881 (U. S. Stats., vol. 21, pages 510, 511), enacted a law as follows, to wit:

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the Secretary of the Treasury be and he is hereby directed to pay out of the unexpended balance of an appropriation of \$924,259 65, under the third section of the Act of Congress approved August 5, 1854, the sum of \$1,290 56, which last named amount is hereby reappropriated to pay to the lawful holders of four California Indian war bonds, issued by said State on the eighteenth day of May, 1856, under the provision of the Act of the Legislature thereof approved May 3, 1852, for the suppression of Indian hostilities therein, numbered, respectively, 164, 166, 167, 168, each bond being for the sum of \$250, and bearing interest from date of issue at the rate of seven per centum per annum, the amount herein appropriated being for the principal of said bonds, with interest thereon from date of issue until the first of July, 1860; *provided*, said bonds shall not be paid except out of any amount remaining unapplied of the appropriation of \$924,259 65 heretofore made.

Under this last law the United States paid four \$250 bonds, to wit, Nos. 164, 166, 167, and 168, all dated May 18, 1856, and all issued under the aforesaid Act of May 3, 1852, the principal and interest represented by coupons aggregating the sum of \$1,288 36.

So that of the bonds and coupons thereto attached, as issued under the two aforesaid Acts of the Legislature of California of February 15, 1851, and May 3, 1852, the United States have up to December 15, 1884, paid the several sums as follows, to wit:

First payment (between September 1, 1856, and January 10, 1872).....	\$914,071 02
Second payment, March, 1872.....	538 11
Third payment, March, 1881.....	1,288 36
Aggregating.....	\$915,897 49
Original appropriation by Congress.....	924,259 65
Balance.....	\$8,362 16

Leaving an unexpended balance, to fifteenth of December, 1884, of the original appropriation of \$8,362 16, which unexpended balance has been heretofore carried into the surplus fund in the United States Treasury, and as now shown by the books thereof.

Herewith, also (except the Tables contained therein, which having been revised and corrected by me, in consequence of the redemption by the United States, since the date of said report, of certain bonds enumerated in said report, and which tables, as now amended, are annexed hereto), will be found a copy of a portion of the official report of the late Controller of the State of California, Hon. W. B. C. Brown, dated May 27, 1878, and as by him addressed to the then Governor of California, Hon. William Irwin, in accordance with Assembly Joint Resolution, No. 73, of the Legislature of California, March 30, 1878, and which report (Exhibit F) throws much official light on this subject.

Wherefore, in the name and on behalf of the State of California, I report that there is now equitably due the State of California by the United States, the sum of \$110,947 38, which sum should be paid by the United States to reimburse said State for the indebtedness by her necessarily incurred and by her heretofore paid for the common defense in the manner and at the dates as hereinbefore fully stated or referred to, and as will more fully appear by the following:

*Table showing the aggregate claim of the State of California against the United States in the matter of certain California Indian war bonds, issued by said State under the authority of the Acts of her Legislature, approved February 15, 1851, and May 3, 1852, respectively.*

THE UNITED STATES TO THE STATE OF CALIFORNIA,	DR.
<i>First</i> —For the redemption and payment of certain California Indian war bonds and coupons attached thereto, issued by the State of California under the Act of her Legislature, approved May 3, 1852, which were redeemed and paid in cash by said State out of her own State Treasury prior to fifteenth December, 1884, together with interest thereon, calculated at 6 per cent per annum up to January 1, 1885, as per Table B.....	\$81,103 43
<i>Second</i> —For the redemption and payment of certain certificates of indebtedness issued by the Treasurer of the State of California in payment of California Indian war expenses, and which certificates were redeemed and paid in cash by said State out of her own State Treasury prior to fifteenth December, 1884, together with interest thereon, calculated at 6 per cent per annum up to January 1, 1885, as per Table G.....	22,550 95
<i>Third</i> —For the reimbursement and payment of certain expenses necessarily incurred by the State of California, and paid in cash by said State out of her own State Treasury prior to fifteenth December, 1884, for preparing and issuing the California Indian war bonds, as provided for by the Act of her Legislature, approved February 15, 1851, together with interest thereon calculated up to January 1, 1885, as per Table H.....	4,433 00
<i>Fourth</i> —For the reimbursement and payment of certain expenses necessarily incurred by the State of California, and paid in cash by said State out of her own State Treasury prior to fifteenth December, 1884, for preparing and issuing the California Indian war bonds, as provided for by the Act of her Legislature, approved May 3, 1852, together with interest thereon calculated up to January 1, 1885, as per Table I.....	2,860 00
Total aggregate claim of the State of California against the United States up to first January, 1885, arising under the aforesaid Acts of February 15, 1851, and May 3, 1852.....	\$110,947 38

Respectfully,  
JOHN MULLAN,  
State Agent for the State of California.

WASHINGTON CITY, D. C., December 15, 1884.

WASHINGTON CITY,  
District of Columbia. } ss.

John Mullan, on first being duly sworn, says that he is now the State Agent for the State of California, and temporarily residing in the City of

Washington, for the purpose, among other things, of presenting the claims of the State of California before the proper authorities and departments of the Government of the United States; that he has read the foregoing statement and the several tables and exhibits thereto attached in regard to the matter of California Indian war claims against the United States, and the whole thereof; that all the matters therein contained (errors and omissions excepted) are true of his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters, that he believes the same to be true.

JOHN MULLAN.

Subscribed and sworn to before me this fifteenth day of December, 1884.

[SEAL.]

N. D. ADAMS, Notary Public,

In and for the City of Washington and District of Columbia.

TABLE A.

*List of all California Indian war bonds, with interest, issued by the State of California under the Act of her Legislature, approved February 15, 1851, for the suppression of Indian hostilities in said State, which have been redeemed and paid by the United States up to December 15, 1884.*

No.	Date of Bond.	Amount of Bond.	No.	Date of Bond.	Amount of Bond.
1	April 1, 1851	\$1,000	43	April 1, 1851	\$1,000
2	April 1, 1851	1,000	44	April 1, 1851	1,000
3	April 1, 1851	1,000	45	April 1, 1851	1,000
4	April 1, 1851	1,000	46	April 1, 1851	1,000
5	April 1, 1851	1,000	47	April 1, 1851	1,000
6	April 1, 1851	1,000	48	April 1, 1851	1,000
7	April 1, 1851	1,000	49	April 1, 1851	1,000
8	April 1, 1851	1,000	50	April 1, 1851	1,000
9	April 1, 1851	1,000	51	April 1, 1851	1,000
10	April 1, 1851	1,000	52	April 1, 1851	1,000
11	April 1, 1851	1,000	53	April 1, 1851	1,000
12	April 1, 1851	1,000	54	April 1, 1851	1,000
13	April 1, 1851	1,000	55	April 1, 1851	1,000
14	April 1, 1851	1,000	56	April 1, 1851	1,000
15	April 1, 1851	1,000	57	April 1, 1851	1,000
16	April 1, 1851	1,000	58	April 1, 1851	1,000
17	April 1, 1851	1,000	59	April 1, 1851	1,000
18	April 1, 1851	1,000	60	April 1, 1851	1,000
19	April 1, 1851	1,000	61	April 1, 1851	1,000
20	April 1, 1851	1,000	62	April 1, 1851	1,000
21	April 1, 1851	1,000	63	April 1, 1851	1,000
22	April 1, 1851	1,000	64	April 1, 1851	1,000
23	April 1, 1851	1,000	65	April 1, 1851	1,000
24	April 1, 1851	1,000	66	April 1, 1851	1,000
25	April 1, 1851	1,000	67*	April 1, 1851	1,000
26	April 1, 1851	1,000	68	April 1, 1851	1,000
27	April 1, 1851	1,000	69	April 1, 1851	1,000
28	April 1, 1851	1,000	70	April 1, 1851	1,000
29	April 1, 1851	1,000	71	April 1, 1851	1,000
30	April 1, 1851	1,000	72	April 1, 1851	1,000
31	April 1, 1851	1,000	73	April 1, 1851	1,000
32	April 1, 1851	1,000	74*	April 1, 1851	1,000
33	April 1, 1851	1,000	75	April 1, 1851	1,000
34*	April 1, 1851	1,000	76	April 1, 1851	1,000
35	April 1, 1851	1,000	77	April 1, 1851	1,000
36	April 1, 1851	1,000	78	April 1, 1851	1,000
37	April 1, 1851	1,000	79	April 1, 1851	1,000
38	April 1, 1851	1,000	80	April 1, 1851	1,000
39	April 1, 1851	1,000	101	April 9, 1851	1,000
40	April 1, 1851	1,000	102	April 9, 1851	1,000
41	April 1, 1851	1,000	103	April 9, 1851	1,000
42*	April 1, 1851	1,000	104	April 9, 1851	1,000

\* Those so noted were paid as duplicates in lieu of the original bonds.

TABLE A—Continued.

No.	Date of Bond.	Amount of Bond.	No.	Date of Bond.	Amount of Bond.
105	April 9, 1851	\$1,000	165	June 10, 1851	\$1,000
106	April 9, 1851	1,000	166	June 10, 1851	1,000
109	April 9, 1851	1,000	167	June 10, 1851	1,000
110	April 9, 1851	1,000	168	June 10, 1851	1,000
111	April 9, 1851	1,000	169	June 10, 1851	1,000
112	April 9, 1851	1,000	170	June 10, 1851	1,000
113	April 9, 1851	1,000	171	June 10, 1851	1,000
114	April 9, 1851	1,000	172	June 10, 1851	1,000
115	April 9, 1851	1,000	173	June 10, 1851	1,000
116	April 9, 1851	1,000	174	June 10, 1851	1,000
117	April 9, 1851	1,000	175	June 10, 1851	1,000
118	April 9, 1851	1,000	176	July 25, 1851	1,000
119	April 9, 1851	1,000	177	July 25, 1851	1,000
120	April 11, 1851	1,000	178	July 25, 1851	1,000
121	April 21, 1851	1,000	179	July 25, 1851	1,000
122	April 21, 1851	1,000	180	July 25, 1851	1,000
123	April 21, 1851	1,000	181	July 25, 1851	1,000
124	April 21, 1851	1,000	182	July 25, 1851	1,000
125	April 21, 1851	1,000	183	July 25, 1851	1,000
126	April 21, 1851	1,000	184	July 25, 1851	1,000
127	April 21, 1851	1,000	185	July 25, 1851	1,000
128	April 21, 1851	1,000	186	July 25, 1851	1,000
129	April 21, 1851	1,000	187	July 25, 1851	1,000
130	April 21, 1851	1,000	188	July 25, 1851	1,000
131	May 24, 1851	1,000	189	July 25, 1851	1,000
132	May 24, 1851	1,000	190	July 25, 1851	1,000
133	May 24, 1851	1,000	191	July 25, 1851	1,000
134	May 24, 1851	1,000	192	July 25, 1851	1,000
135	May 24, 1851	1,000	193	July 25, 1851	1,000
136	May 24, 1851	1,000	194	July 25, 1851	1,000
137	May 24, 1851	1,000	195	July 25, 1851	1,000
138	May 24, 1851	1,000	196	July 25, 1851	1,000
139	May 24, 1851	1,000	197	July 25, 1851	1,000
140	May 24, 1851	1,000	198	July 25, 1851	1,000
141	May 24, 1851	1,000	199	July 25, 1851	1,000
143	May 24, 1851	1,000	226	July 25, 1851	1,000
144	May 24, 1851	1,000	227	July 25, 1851	1,000
145	May 24, 1851	1,000	228	July 25, 1851	1,000
146	May 24, 1851	1,000	229	July 25, 1851	1,000
147	May 24, 1851	1,000	230	July 25, 1851	1,000
148	May 24, 1851	1,000	231	July 25, 1851	1,000
149	May 24, 1851	1,000	232	July 25, 1851	1,000
150	May 24, 1851	1,000	233	July 25, 1851	1,000
151	June 10, 1851	1,000	234	July 25, 1851	1,000
152	June 10, 1851	1,000	235	July 25, 1851	1,000
153	June 10, 1851	1,000	236	July 25, 1851	1,000
154	June 10, 1851	1,000	237	July 25, 1851	1,000
155	June 10, 1851	1,000	238	July 25, 1851	1,000
156	June 10, 1851	1,000	239	July 25, 1851	1,000
157	June 10, 1851	1,000	240	July 25, 1851	1,000
158	June 10, 1851	1,000	241	July 25, 1851	1,000
159	June 10, 1851	1,000	242	July 25, 1851	1,000
160	June 10, 1851	1,000	243	July 25, 1851	1,000
161	June 10, 1851	1,000	244	July 25, 1851	1,000
162	June 10, 1851	1,000	245	July 25, 1851	1,000
163	June 10, 1851	1,000	268	April 8, 1851	1,000
164	June 10, 1851	1,000			

TABLE A—Continued.

List of all California Indian war bonds issued by the State of California under the Act of her Legislature, approved May 3, 1852, for the suppression of Indian hostilities in said State, which have been redeemed and paid by the United States up to December 15, 1884.

First—Bonds bearing date prior to January 1, 1854, with interest upon the coupons up to the first day of January, 1854:

No. of Bond.	Amount of each Bond.	No. of Bond.	Amount of each Bond.
1 to 341, inclusive	\$1,000	70 to 105, inclusive	\$250
1 to 90, inclusive	500	1 to 114, inclusive	100
92 to 185, inclusive	500	116 to 131, inclusive	100
186	500	164 to 218, inclusive	100
187 to 306, inclusive	500	220 to 267, inclusive	100
308 to 399, inclusive	500	272 to 296, inclusive	100
1 to 68, inclusive	250		

Second—Bonds bearing date subsequent to the first of January, 1854, with coupons paid to the first of July, 1860:

No. of Bond.	Amount of each Bond.	No. of Bond.	Amount of each Bond.
403	\$500	121	\$250
409	500	122	250
410	500	123	250
411	500	124	250
413	500	125	250
108	250	126	250
109	250	140	250
110	250	149	250

TABLE A—Continued.

Second—Bonds bearing date subsequent to the first of January, 1854, with coupons paid to the first of July, 1860—Continued.

Number of Bond.	Amount of each Bond.	Number of Bond.	Amount of each Bond.
302	\$100 00	344	\$100 00
324	100 00	345	100 00
325	100 00	346	100 00
326	100 00	347	100 00
334	100 00	350	100 00
335	100 00	358	100 00
336	100 00	359	100 00
337	100 00	366	100 00
338	100 00	370	100 00
339	100 00	375	100 00
342	100 00	376	100 00
343	100 00		

Third—Bonds bearing date subsequent to the first of January, 1854, with coupons paid to the first of July, 1860:

Number of Bond.	Amount of each Bond.	Number of Bond.	Amount of each Bond.
164	\$250 00	167	\$250 00
165	250 00	168	250 00

TABLE B.

List showing the number and amounts of certain seven (7) per cent Indian war bonds issued by the State of California under the Act of her Legislature, approved May 3, 1852, and redeemed by said State, and paid by her in cash, together with the interest earned thereon up to date of payment thereof, as evidenced by the coupons attached thereto, and as provided for in the Act of the Legislature of said State, approved March 31, 1866 (Statutes of California, 1866-6, page 516).

No. of Bond.	Date of Issuance of Bond.	Amount of the face of Bond.	Amount of Interest paid on said Bond.	Date of Payment of Bond and Interest.	Total Amount of Principal and Interest paid.	Interest due California from dates of payment by her to January 1, 1885.	Total Amount due State of California to January 1, 1885.
297	January 5, 1854	\$100 00	\$58 27 1/2	June 30, 1866	\$158 27 1/2	\$175 68	\$333 95 1/2
298	January 5, 1854	100 00	58 27 1/2	June 30, 1866	158 27 1/2	175 68	333 95 1/2
299	January 5, 1854	100 00	58 27 1/2	June 30, 1866	158 27 1/2	175 68	333 95 1/2
300	January 5, 1854	100 00	58 27 1/2	June 30, 1866	158 27 1/2	175 68	333 95 1/2
301	January 5, 1854	100 00	58 01 1/2	April 9, 1866	158 01 1/2	177 54	335 55 1/2
302	January 17, 1854	100 00	57 86 1/2	April 9, 1866	157 86 1/2	177 54	335 55 1/2
303	January 19, 1854	100 00	57 84 1/2	April 9, 1866	157 84 1/2	177 32	335 16 1/2
304	January 27, 1854	100 00	57 84 1/2	April 9, 1866	157 84 1/2	177 32	335 16 1/2
305	January 27, 1854	100 00	57 84 1/2	April 9, 1866	157 84 1/2	177 32	335 16 1/2
306	January 27, 1854	100 00	57 78 1/2	June 30, 1866	157 78 1/2	175 14	332 92 1/2
307	January 30, 1854	100 00	57 78 1/2	June 30, 1866	157 78 1/2	175 14	332 92 1/2
308	January 31, 1854	100 00	57 76 1/2	April 9, 1866	157 76 1/2	177 24	335 00 1/2
309	January 31, 1854	100 00	57 76 1/2	June 30, 1866	157 76 1/2	175 12	332 88 1/2
310	January 31, 1854	100 00	57 76	April 4, 1866	157 76	177 37	335 13
311	February 1, 1854	100 00	57 59	August 31, 1866	157 59	173 36	330 95
312	February 7, 1854	100 00	57 59	April 5, 1866	157 59	177 16	334 75
313	February 13, 1854	100 00	57 37 1/2	April 9, 1866	157 37 1/2	176 82	334 19 1/2
314	February 23, 1854	100 00	57 18 1/2	April 9, 1866	157 18 1/2	176 61	333 79 1/2
315	February 28, 1854	100 00	57 18 1/2	April 9, 1866	157 18 1/2	176 61	333 79 1/2
316	February 28, 1854	100 00	57 18 1/2	April 9, 1866	157 18 1/2	176 61	333 79 1/2
317	February 28, 1854	100 00	57 18 1/2	June 30, 1866	157 18 1/2	174 46	331 64 1/2
318	February 28, 1854	100 00	57 18 1/2	June 30, 1866	157 18 1/2	173 97	330 72 1/2
319	February 28, 1854	100 00	56 75 1/2	June 30, 1866	156 75 1/2	173 86	330 49 1/2
320	March 22, 1854	100 00	56 63 1/2	June 30, 1866	156 63 1/2	173 86	330 49 1/2
321	March 22, 1854	100 00	56 63 1/2	June 30, 1866	156 63 1/2	175 94	332 54 1/2
322	March 29, 1854	100 00	56 60 1/2	April 9, 1866	156 60 1/2	167 25	319 30
323	March 29, 1854	100 00	52 05	August 31, 1866	152 05	175 52	331 75 1/2
324	November 24, 1854	100 00	56 21 1/2	April 9, 1866	156 21 1/2	175 52	331 75 1/2
325	April 20, 1854	100 00	56 21 1/2	April 9, 1866	156 21 1/2	175 36	331 40 1/2
326	April 20, 1854	100 00	56 05 1/2	April 9, 1866	156 05 1/2	175 36	331 40 1/2
327	April 28, 1854	100 00	56 05 1/2	April 9, 1866	156 05 1/2	175 36	331 40 1/2
328	April 28, 1854	100 00	56 05 1/2	April 9, 1866	156 05 1/2	175 36	331 40 1/2

TABLE B—Continued.

No. of Bond.	Date of Issuance of Bond.	Amount of the face of Bond.	Amount of Interest paid on said Bond.	Date of Payment of Bond and Interest.	Total Amount of Principal and Interest paid.	Interest due California from dates of payment by her to January 1, 1886.	Total Amount due State of California to January 1, 1886.
362	April 28, 1854	\$100 00	\$56 054	April 9, 1866	\$156 054	\$175 35	\$331 401
363	April 28, 1854	100 00	56 054	April 9, 1866	156 054	175 35	331 401
364	April 28, 1854	100 00	56 054	April 9, 1866	156 054	175 35	331 401
365	April 28, 1854	100 00	56 054	April 9, 1866	156 054	175 35	331 401
366	April 28, 1854	100 00	56 054	April 9, 1866	156 054	175 35	331 401
367	April 28, 1854	100 00	56 054	April 9, 1866	156 054	175 35	331 401
368	April 28, 1854	100 00	56 054	April 9, 1866	156 054	175 35	331 401
369	April 28, 1854	100 00	56 054	April 9, 1866	156 054	175 35	331 401
370	June 5, 1854	100 00	55 334	June 30, 1866	154 464	174 32	329 654
371	July 20, 1854	100 00	54 264	April 9, 1866	154 264	173 32	327 584
372	July 31, 1854	100 00	54 264	April 9, 1866	154 264	173 32	327 584
373	July 31, 1854	100 00	54 264	April 9, 1866	154 264	173 32	327 584
374	August 11, 1854	100 00	54 054	April 9, 1866	154 054	172 10	326 154
375	August 11, 1854	100 00	54 054	April 9, 1866	154 054	172 10	326 154
376	August 24, 1854	100 00	53 804	April 9, 1866	153 804	172 78	326 584
377	September 2, 1854	100 00	53 64	August 31, 1866	153 64	168 88	322 52
378	September 14, 1854	100 00	53 41	April 5, 1866	153 41	172 60	326 24
379	September 30, 1854	100 00	51 72	April 5, 1866	151 72	172 51	324 92
380	December 30, 1854	100 00	47 69	April 5, 1866	147 69	166 02	313 71
381	July 9, 1855	100 00	47 69	April 5, 1866	147 69	166 02	313 71
382	July 9, 1855	100 00	47 69	April 5, 1866	147 69	166 02	313 71
383	August 1, 1855	100 00	47 30	April 5, 1866	147 30	165 62	312 92
384	August 1, 1855	100 00	47 30	April 5, 1866	147 30	165 62	312 92
385	August 15, 1855	100 00	46 99	August 31, 1866	146 99	161 67	308 66
386	August 15, 1855	100 00	46 99	August 31, 1866	146 99	161 67	308 66
387	August 17, 1855	100 00	46 99	August 31, 1866	146 99	161 67	308 66
388	August 17, 1855	100 00	46 99	August 31, 1866	146 99	161 67	308 66
389	August 17, 1855	100 00	46 99	August 31, 1866	146 99	161 67	308 66
390	January 1, 1857	100 00	37 354	April 9, 1866	137 354	154 34	291 694
391	January 1, 1857	100 00	37 354	April 9, 1866	137 354	154 34	291 694
392	May 18, 1856	250 00	41 684	April 9, 1866	141 684	167 80	309 484
393	January 5, 1854	250 00	145 684	April 9, 1866	395 684	444 58	840 264
394	January 5, 1854	250 00	145 684	April 9, 1866	395 684	444 58	840 264
395	January 5, 1854	250 00	144 424	April 9, 1866	394 424	443 18	837 604
396	February 1, 1854	250 00	144 424	April 14, 1866	394 424	442 84	837 264
397	February 7, 1854	250 00	143 98	April 14, 1866	393 98	436 33	830 31

115	February 7, 1854	250 00	143 98	April 9, 1866	393 98	436 93	830 64
116	February 18, 1854	250 00	143 444	April 9, 1866	393 444	442 08	835 524
117	March 23, 1854	250 00	141 894	April 9, 1866	391 894	440 31	832 204
118	March 23, 1854	250 00	141 604	April 9, 1866	391 604	440 00	831 604
119	March 23, 1854	250 00	141 604	April 9, 1866	391 604	439 89	831 394
120	March 31, 1854	250 00	141 604	April 9, 1866	391 604	436 35	824 694
121	June 5, 1854	250 00	138 344	April 9, 1866	386 344	433 84	819 944
122	July 21, 1854	250 00	136 104	April 9, 1866	386 104	433 84	819 944
123	July 21, 1854	250 00	136 104	April 9, 1866	386 104	432 97	818 304
124	July 21, 1854	250 00	135 834	April 9, 1866	385 834	432 97	818 304
125	August 7, 1854	250 00	135 834	April 9, 1866	385 834	431 93	816 04
126	August 7, 1854	250 00	135 834	April 9, 1866	385 834	431 19	814 72
127	September 2, 1854	250 00	134 11	April 5, 1866	383 53	431 25	814 78
128	September 14, 1854	250 00	133 53	April 5, 1866	383 53	425 70	809 23
129	September 14, 1854	250 00	133 53	June 30, 1866	383 53	424 94	808 124
130	September 14, 1854	250 00	128 184	April 9, 1866	378 184	424 94	803 124
131	January 4, 1855	250 00	128 184	April 9, 1866	378 184	412 86	780 304
132	January 4, 1855	250 00	117 444	April 9, 1866	367 444	412 86	742 234
133	August 17, 1855	250 00	104 224	April 9, 1866	354 224	385 83	729 214
134	May 18, 1856	250 00	98 354	April 9, 1866	343 354	385 83	729 214
135	January 1, 1857	250 00	98 354	April 9, 1866	343 354	385 83	729 214
136	April 28, 1857	250 00	98 354	April 9, 1866	343 354	385 83	729 214
137	April 28, 1857	250 00	98 354	April 9, 1866	343 354	385 83	729 214
138	April 28, 1857	250 00	118 27	April 4, 1866	368 27	414 11	782 38
139	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
140	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
141	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
142	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
143	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
144	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
145	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
146	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
147	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
148	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
149	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
150	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
151	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
152	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
153	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
154	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
155	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
156	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
157	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
158	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
159	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
160	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
161	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
162	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
163	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
164	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
165	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
166	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
167	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
168	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
169	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
170	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
171	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
172	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
173	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
174	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
175	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
176	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
177	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
178	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
179	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
180	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
181	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
182	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
183	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
184	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
185	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
186	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
187	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
188	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
189	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
190	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
191	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
192	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
193	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
194	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
195	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
196	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
197	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
198	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
199	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38
200	August 1, 1855	250 00	118 27	April 4, 1866	368 27	414 11	782 38

Total aggregate due State of California up to January 1, 1885

\$69,062 938



TABLE B—Continued.

List showing the number and amounts of certain seven (7) per cent Indian war bonds issued by the State of California under the Act of her Legislature, approved May 3, 1852, and redeemed by said State, and paid by her in cash, together with the interest earned thereon up to date of payment thereof, as evidenced by the coupons attached thereto, and as provided for in the Act of the Legislature of said State, approved March 23, 1863 (Statutes of California, 1867-68, page 468.)

No. of Bond.	Date of Issuance of Bond.	Amount of the face of Bond.	Amount of Interest paid on said Bond.	Date of Payment of Bond and Interest.	Total Amount of Principal and Interest Paid.	Interest due California from dates of payment by her to January 1, 1885.	Total Amount due State of California to January 1, 1885.
421	August 13, 1855.	\$100 00	\$96 00	March 31, 1868.	\$196 00	\$244 02	\$440 02
422	August 13, 1855.	100 00	96 00	March 31, 1868.	196 00	244 02	440 02
423	August 13, 1855.	100 00	96 00	March 31, 1868.	196 00	244 02	440 02
424	August 13, 1855.	100 00	96 00	March 31, 1868.	196 00	244 02	440 02
377.	May 23, 1854.	100 00	55 56	May 2, 1868.	155 56	202 84	358 40
378	May 23, 1854.	100 00	55 56	May 2, 1868.	155 56	202 84	358 40
379	May 23, 1854.	100 00	55 56	May 2, 1868.	155 56	202 84	358 40
432	November 24, 1854.	100 00	93 45	April 4, 1868.	193 45	240 71	434 16
433	November 24, 1854.	100 00	93 45	April 4, 1868.	193 45	240 71	434 16
Total aggregate due State of California to January 1, 1885.							\$3,703 60

TABLE B—Continued.

List showing the number and amounts of certain seven (7) per cent Indian war bonds, issued by the State of California under the Act of her Legislature, approved May 3, 1852, and redeemed by said State, and paid by her in cash, together with the interest earned thereon up to date of payment thereof, as evidenced by the coupons attached thereto, and as provided for in the Act of the Legislature of said State, approved April 4, 1870 (Statutes of California, 1869-70, page 693.)

No. of Bond.	Date of Issuance of Bond.	Amount of the face of Bond.	Amount of Interest paid on said Bond.	Date of Payment of Bond and Interest.	Total Amount of Principal and Interest Paid.	Interest due California from dates of payment by her to January 1, 1885.	Total Amount due State of California to January 1, 1885.
39	September 20, 1852.	\$250 00	\$167 98	May 4, 1870.	\$417 98	\$367 57	\$785 55
91	August 21, 1852.	500 00	339 39	May 4, 1870.	839 39	738 23	1,577 62
115	September 20, 1852.	100 00	67 31	May 4, 1870.	167 31	148 14	315 45
418	July 6, 1854.	500 00	273 67	April 6, 1870.	773 67	694 02	1,467 69
Controller's Warrants.							
285	August 21, 1852.	46 00	56 08	May 4, 1870.	102 08	89 78	191 86
496	September 13, 1852.	36 00	43 68	May 4, 1870.	79 68	70 05	149 73
Total aggregate due State of California to first January, 1885.							\$4,477 90

List showing number and amount of certain twelve per cent Indian war bonds issued by the State of California under the Act of her Legislature, approved February 15, 1851, and redeemed by said State, and paid by her in cash, together with the interest earned thereon up to date of payment thereof, as evidenced by the coupons attached thereto, and as provided for in the Act of the Legislature of said State, approved March 30, 1872 (Statutes of California, 1871-2, page 793.)

No. of Bond.	Date of Issuance of Bond.	Amount of the face of Bond.	Amount of Interest paid on said Bond.	Date of Payment of Bond and Interest.	Total Amount of Principal and Interest Paid.	Interest due California from dates of payment by her to January 1, 1886.	Total Amount due State of California to January 1, 1886.
34	April 1, 1851.	\$1,000 00	\$1,190 00	April 15, 1872.	\$2,190 00	\$1,669 85	\$3,859 00

I hereby certify, that the foregoing and attached Table (B) correctly set forth the numbers of certain bonds, the dates of the issuance of certain bonds, the amounts of the face of certain bonds, the amounts of interest paid on certain bonds, the dates of the payment of certain bonds, with the interest thereon, and the total amounts of the principal and interest paid on certain bonds heretofore issued by the State of California under the Acts of her Legislature, approved February 15, 1851, and May 3, 1852, respectively, and as heretofore redeemed and paid by the State of California.

(Signed.)

JOHN P. DUNN, Controller of the State of California.

OFFICE OF CONTROLLER OF STATE, SACRAMENTO, September 27, 1884.

[CONTROLLER'S SEAL OF OFFICE.]

TABLE C.

List of all California Indian war bonds, with interest, issued by the State of California, under the Act of her Legislature approved February 15, 1851, for the suppression of Indian hostilities in said State which have not, up to December 15, 1884, been redeemed or paid by either said State or by the United States, but which are now outstanding, unpaid, and overdue.

No.	Date of Bond.	Amount.	Interest to February 15, 1861.	Total.
107	April 9, 1851.....	\$1,000 00	\$1,182 00	\$2,182 00
108	April 9, 1851.....	1,000 00	1,182 00	2,182 00
142	May 24, 1851.....	1,000 00	1,167 00	2,167 00
	Total aggregate.....			\$6,531 00

TABLE C.

List of all California Indian war bonds, with interest, issued by the State of California under the Act of her Legislature approved May 3, 1852, for the suppression of Indian hostilities in said State which have not, up to December 15, 1884, been redeemed or paid by either said State or by the United States, but which are now outstanding, unpaid, and overdue.

No.	Date of Bond.	Amount.	Interest to May 2, 1862.	Total.
132	October 11, 1852.....	\$100 00	\$66 91	\$166 91
133	October 11, 1852.....	100 00	66 91	166 91
134	October 12, 1852.....	100 00	66 89	166 89
135	October 12, 1852.....	100 00	66 89	166 89
136	October 12, 1852.....	100 00	66 89	166 89
137	October 18, 1852.....	100 00	66 77	166 77
138	October 19, 1852.....	100 00	66 75	166 75
139	October 23, 1852.....	100 00	66 67	166 67
140	October 23, 1852.....	100 00	66 67	166 67
141	October 23, 1852.....	100 00	66 67	166 67
142	October 25, 1852.....	100 00	66 63	166 63
143	October 25, 1852.....	100 00	66 63	166 63
144	October 25, 1852.....	100 00	66 63	166 63
145	October 25, 1852.....	100 00	66 63	166 63
146	October 25, 1852.....	100 00	66 63	166 63
147	October 25, 1852.....	100 00	66 63	166 63
148	October 27, 1852.....	100 00	66 59	166 59
149	October 27, 1852.....	100 00	66 59	166 59
150	October 28, 1852.....	100 00	66 57	166 57
151	November 1, 1852.....	100 00	66 51	166 51
152	November 1, 1852.....	100 00	66 51	166 51
153	November 3, 1852.....	100 00	66 47	166 47
154	November 13, 1852.....	100 00	66 28	166 28
155	November 13, 1852.....	100 00	66 28	166 28
156	November 13, 1852.....	100 00	66 28	166 28
157	November 16, 1852.....	100 00	66 22	166 22
158	November 18, 1852.....	100 00	66 18	166 18
159	November 18, 1852.....	100 00	66 18	166 18
	Total aggregate.....			\$4,664 46

TABLE C—Continued.

No.	Date of Bond.	Amount.	Interest to May 2, 1862.	Total.
160	November 22, 1852.....	\$100 00	\$66 10	\$166 10
161	November 22, 1852.....	100 00	66 10	166 10
162	November 25, 1852.....	100 00	66 05	166 05
163	November 25, 1852.....	100 00	66 05	166 05
219	April 27, 1853.....	100 08	63 10	163 10
268	August 13, 1853.....	100 00	61 04	161 04
269	August 13, 1853.....	100 00	61 04	161 04
270	August 13, 1853.....	100 00	61 04	161 04
271	August 13, 1853.....	100 00	61 04	161 04
305	January 19, 1854.....	100 00	58 20	158 20
306	January 19, 1854.....	100 00	58 20	158 20
329	March 29, 1854.....	100 00	56 64	156 64
331	March 31, 1854.....	100 00	56 60	156 60
332	March 31, 1854.....	100 00	56 60	156 60
333	March 31, 1854.....	100 00	56 60	156 60
340	April 12, 1854.....	100 00	56 39	156 39
341	April 12, 1854.....	100 00	56 39	156 39
348	April 17, 1854.....	100 00	56 29	156 29
349	April 17, 1854.....	100 00	56 29	156 29
353	April 25, 1854.....	100 00	56 14	156 14
354	April 25, 1854.....	100 00	56 14	156 14
355	April 25, 1854.....	100 00	56 14	156 14
356	April 25, 1854.....	100 00	56 14	156 14
371	May 13, 1854.....	100 00	55 85	155 85
372	May 13, 1854.....	100 00	55 85	155 85
373	May 13, 1854.....	100 00	55 85	155 85
374	May 13, 1854.....	100 00	55 85	155 85
380	May 26, 1854.....	100 00	55 53	155 53
381	May 26, 1854.....	100 00	55 53	155 53
383	June 6, 1854.....	100 00	55 33	155 33
384	July 10, 1854.....	100 00	54 67	154 67
386	July 21, 1854.....	100 00	54 47	154 47
390	August 7, 1854.....	100 00	54 15	154 15
391	August 11, 1854.....	100 00	54 07	154 07
394	August 19, 1854.....	100 00	53 92	153 92
398	September 2, 1854.....	100 00	53 67	153 67
401	October 23, 1854.....	100 00	52 68	152 68
402	October 24, 1854.....	100 00	52 66	152 66
403	November 24, 1854.....	100 00	52 08	152 08
404	November 24, 1854.....	100 00	52 08	152 08
505	November 24, 1854.....	100 00	52 08	152 08
406	November 24, 1854.....	100 00	52 08	152 08
407	November 24, 1854.....	100 00	52 08	152 08
409	April 4, 1855.....	100 00	49 54	149 54
413	July 28, 1855.....	100 00	47 33	147 33
416	August 1, 1855.....	100 00	47 27	147 27
417	August 13, 1855.....	100 00	47 04	147 04
418	August 13, 1855.....	100 00	47 04	147 04
419	August 13, 1855.....	100 00	47 04	147 04
420	August 13, 1855.....	100 00	47 04	147 04
69	November 25, 1852.....	250 00	165 14	415 14
113	February 3, 1854.....	250 00	144 33	394 33
128	July 10, 1854.....	250 00	136 70	386 70
129	July 21, 1854.....	250 00	136 15	386 15
130	July 21, 1854.....	250 00	136 15	386 15
134	July 21, 1854.....	250 00	136 15	386 15
135	July 21, 1854.....	250 00	136 15	386 15
136	July 21, 1854.....	250 00	136 15	386 15
139	August 24, 1854.....	250 00	134 55	384 55
141	August 26, 1854.....	250 00	134 55	384 55
142	August 26, 1854.....	250 00	134 55	384 55
143	August 26, 1854.....	250 00	134 55	384 55
145	September 14, 1854.....	250 00	133 58	383 58
146	September 14, 1854.....	250 00	133 58	383 58
151	October 18, 1854.....	250 00	131 93	381 93
152	October 24, 1854.....	250 00	131 64	381 64
153	October 24, 1854.....	250 00	131 64	381 64
154	October 24, 1854.....	250 00	131 64	381 64
155	October 24, 1854.....	250 00	131 64	381 64

TABLE C—Continued.

No.	Date of Bond.	Amount.	Interest to May 2, 1862.	Total.
156	October 24, 1854 .....	\$250 00	\$131 64	\$381 64
160	August 1, 1855 .....	250 00	118 17	368 17
161	August 1, 1855 .....	250 00	118 17	368 17
162	August 1, 1855 .....	250 00	118 17	368 17
163	August 15, 1855 .....	250 90	117 50	367 50
307	May 14, 1853 .....	500 00	313 83	813 83
416	May 13, 1854 .....	500 00	278 92	778 92
420	July 10, 1854 .....	500 00	273 38	773 38
Total aggregate .....				\$9,977 93

TABLE D.

*Amount of coupons detached from bonds paid by the United States September 1, 1856, and which coupons represent interest earned by said bonds between January 1, 1854, and September 1, 1856, and which interest has never heretofore been paid either by the United States or by the State of California.*

Interest on \$197,000, bonds of 1851, for thirty-two months, from January 1, 1854, to September 1, 1856, at 12 per cent per annum .....	\$63,040 00
Interest on \$590,800, bonds of 1852, for thirty-two months, from January 1, 1854, to September 1, 1856, at 7 per cent per annum .....	110,282 66
Total aggregate .....	\$173,322 66

TABLE G.

*List showing the amount of certificates of indebtedness issued by the Treasurer of the State of California prior to January 1, 1854, in payment of California Indian war expenses, and which certificates were redeemed and paid in cash by said State out of her own State Treasury prior to the fifteenth of December, 1884, and which have not been redeemed or paid by the United States.*

Amount .....	\$7,896 62
Less cash received .....	11 67
Balance .....	\$7,884 95
Interest due State of California from January 1, 1854, to January 1, 1885 .....	14,666 00
Total amount due State of California to January 1, 1885 .....	\$22,550 95

TABLE H.

*List showing the amount of expenses necessarily incurred by the State of California, and paid in cash by said State out of her own State Treasury, prior to December 15, 1884, for preparing and issuing the California Indian war bonds, as provided for by the Act of her Legislature approved February 15, 1851, and no portion of which amount has heretofore been reimbursed said State by the United States.*

Amount .....	\$1,550 00
Interest due State of California from January 1, 1854, to January 1, 1885 .....	2,883 00
Total amount due State of California to January 1, 1885 .....	\$4,433 00

TABLE I.

*List showing the amount of expenses necessarily incurred by the State of California, and paid in cash by said State out of her own State Treasury, prior to December 15, 1884, for preparing and issuing the California Indian war bonds, as provided for by the Act of her Legislature approved May 3, 1852, and no portion of which amount has heretofore been reimbursed said State by the United States.*

Amount .....	\$1,000 00
Interest due State of California from January 1, 1854, to January 1, 1885 .....	1,860 00
Total amount due State of California to January 1, 1885 .....	\$2,860 00

EXHIBIT E.

Letter from the office of Third Auditor of the Treasury, February 16, 1882:  
 "I have to state that under Acts of August 5, 1854, August 13, 1855, June 23, 1860, and July 25, 1868, the holders of bonds of said State who have presented the same to this Department have been paid the sum of \$914,071 02 for principal and interest which had accrued prior to January 1, 1854; and if there are any unpaid bonds and accrued interest which are considered as properly chargeable to the United States, no good reason appears why they should not be presented to the accounting officers of the Treasury for settlement in the same manner as those heretofore presented and paid, under any statute Congress may deem proper to enact, and the appropriation remain in the Treasury of the United States, to be drawn from as the claims shall be presented and settled, instead of depositing the total amount of the appropriation with the Treasurer of the State of California, as expressed in the second section of said bill. If the State of California has paid the bonds and interest, or any part thereof, she should present her claim for reimbursement, by filing the bonds and coupons paid in the same manner as individual holders and owners. This would obviate the covering back into the Treasury of the United States any unexpended balance which might be retained in the Treasury of the State for years, as the bill does not fix a time for returning the balance to the Treasury of the United States."

The foregoing letter was addressed by Hon. A. M. Gangewer, Acting Third Auditor, to Hon. Charles J. Folger, Secretary of the Treasury:

EXHIBIT F.

Controller's Report, made under and in accordance with Assembly Joint Resolution No. 73, March 30, 1878, to his Excellency the Governor. (Twenty-second session of the Legislature.)

CONTROLLER'S OFFICE, SACRAMENTO, May 27, 1878.

To his Excellency WILLIAM IRWIN, Governor of California:

SIR: In conformity with your request made under the authority of Assembly Joint Resolution No. 73, adopted March 30, 1878, \* \* \* I have the honor to make the following statement:

I find upon examination of War Bond Register in State Treasurer's Office, and other records in Controller's office, that, under the Act of the Legislature of California approved February 15, 1851 (Statutes 1851, page 520), Indian war bonds were issued by the State of California to the amount of \$200,000, bearing interest at the rate of twelve per cent per annum, and payable in ten years; that under the Act of the Legislature of May 3, 1852 (Statutes of 1852, page 59), Indian war bonds were issued by the State of California to the amount of \$638,100, bearing interest at the rate of seven per cent per annum, and payable in ten years.

Of the principal of the above named bonds of 1851, amounting to \$200,000, I find, according to printed report of William Theodore Van Doren, clerk Third Auditor's office, Washington, made January 10, 1872 (see Appendix to Journal of California Senate and Assembly for the nineteenth session, pages 28 and 29), that the United States Government has paid \$197,000; that of the principal of the above named bonds of 1852, amounting to \$638,100 (according to said report of William Theodore Van Doren, above referred to), the United States Government has paid \$598,450; that of the principal of the last above named bonds of the State of California (according to Controller's books) has paid \$22,850, leaving outstanding, of the principal of the bonds of 1851, \$3,000; of the principal of the bonds of 1852, \$16,800, together with interest on the same. \* \* \*

Could the appropriation of \$924,259 65 have been made immediately available, it would have paid up in full, principal and interest, the said bonds under Acts of 1851 and 1852, issued prior to January 1, 1854; but owing to the ruling of the honorable Secretary of War, to the effect that the vouchers upon which said bonds were issued would have to be presented for examination to the War Department at Washington, delay was caused, the result of which was, that before the bondholders received their money some two years and eight months elapsed, and the interest coupons from January 1, 1854 (the date to which interest was paid on bonds redeemed by the United States Government bearing date prior to January 1, 1854), to September 1, 1856, and amounting to \$173,322 66, were cut from the said redeemed bonds and returned to the respective holders of said bonds so presented for redemption; which will more fully and at large appear by reference to reports made to the Governor of California, by Samuel B. Smith and J. W. Denver, Commissioners California War Debt, which reports bear date, respectively, January 5, 1857, and January 30, 1860. (See Appendix to Journals of Senate and Assembly, nineteenth session, pages 10, 11, 12, and 13.)

Included in the \$638,100 of the seven per cent bonds first herein described, are bonds bearing date after said first day of January, 1854, which were issued under the said Act of 1852, and Acts amendatory thereof—a large number of which, both principal and interest, have been paid in full by the United States Government—said Government thus acknowledging, to the fullest extent, the validity of the issue of bonds of later date than January

1, 1854, and the obligation of the General Government to pay the same; all of which will more fully appear by reference to the records of the United States War Department.

To sum up, the account in tabular form is as follows:

Bonds of 1851 outstanding (principal).....	\$3,000 00
Interest on same from date to maturity.....	3,531 00
Bonds under Act of 1852 outstanding (principal).....	15,300 00
Interest on same from date of bond to May 2, 1862, time of maturity.....	8,701 81
Coupons outstanding, cut from bonds of 1851, redeemed by United States Government, said coupons being for interest on said bonds from January 1, 1854, to September 1, 1856.....	63,040 00
Coupons outstanding, cut from bonds of 1852, redeemed by the United States Government, said coupons being for interest on said bonds from January 1, 1854, to September 1, 1856.....	110,282 66

Total amount of bonds, principal and interest, outstanding.....\$203,855 47

To which amount is to be added the amount of principal and interest of said bonds under the Act of May 3, 1852, paid by the State of California, \* \* \* for which the General Government is justly liable to the State.  
All of which is respectfully submitted.

W. B. C. BROWN, Controller.

### EXHIBIT No. 23.

Forty-ninth Congress, first session. H. R. 153.

In the House of Representatives. December 21, 1885—Read twice, referred to the Committee on Indian Affairs, and ordered to be printed.

Mr. Henley introduced the following bill:

#### A BILL

*To reappropriate the unexpended balance heretofore appropriated by Congress for the suppression of Indian hostilities in the State of California.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the unexpended balance of eight thousand three hundred and sixty-two dollars and sixteen cents of the appropriation made by Congress August fifth, eighteen hundred and fifty-four (tenth Statutes, pages five hundred and eighty-two and five hundred and eighty-three), and August eighteenth, eighteen hundred and fifty-six (United States Statutes, volume eleven, page ninety-one), for the suppression of Indian hostilities in the State of California, and carried to the surplus fund, be and the same is hereby reappropriated; and the Secretary of the Treasury is hereby authorized and directed to pay the said sum to the State of California upon the surrender by said State to said Secretary of bonds and coupons issued by said State in part payment of said expenses, which have been redeemed and paid by said State in said sum; and the aforesaid sum shall be paid said State upon her furnishing the Secretary of the Treasury satisfactory evidence that bonds and coupons so issued have been redeemed, paid, and canceled to the amount of said unexpended balance, under and by the authority of the Legislature of said State.*

Forty-ninth Congress, first session. H. R. 135.

In the House of Representatives. December 21, 1885—Read twice, referred to the Committee on War Claims, and ordered to be printed.

Mr. Henley introduced the following bill:

#### A BILL

*For the relief of the State of California.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the provisions of the Act of Congress approved June twenty-seventh, eighteen hundred and eighty-two (United States Statutes, volume twenty-two, page one hundred and eleven), be and the same are hereby extended to all Indian war claims arising in the State of California and upon the borders thereof between September ninth, eighteen hundred and fifty, and April fifteenth, eighteen hundred and sixty-one, and for which no provision has heretofore been enacted by Congress, or which have not been heretofore presented to the proper accounting officers of the Treasury.*

SEC. 2. That the Secretary of the Treasury be and he is hereby authorized and directed to pay to the State of California any sum found due upon investigation for balances alleged to have been paid and assumed and remaining due and to be paid by said State on account of Indian war bonds, coupons, and certificates issued by said State under the Acts of her Legislature approved February fifteenth, eighteen hundred and fifty-one, May third, eighteen hundred and fifty-two, and April twenty-fifth, eighteen hundred and fifty-seven, respectively, on account of the suppression of Indian hostilities within and upon the borders of said State; *provided*, that the sum so paid shall not exceed in amount the sum of two hundred and fifty thousand dollars, which amount is hereby appropriated out of any money in the Treasury not otherwise appropriated, and to be paid to said State upon the surrender by her of said bonds, coupons, and certificates of indebtedness, or pro rata for any portion thereof, to the Secretary of the Treasury.

SEC. 3. That the privilege is hereby granted to the State of California of presenting to the Secretary of the Treasury any new or additional evidence in support of any of its war claims filed or to be filed; and the Secretary of the Treasury is hereby authorized and directed to reopen, investigate, and examine the same, in connection with such evidence so presented, together with any such evidence as may be already of record in his department at the date of the passage of this Act; and at the earliest practicable time he shall report to Congress, for final action, the results of such examination and investigation, and the amounts found to be equitably due or expended by said State for any of the purposes aforesaid.

Forty-ninth Congress, first session. H. R. 5566.

In the House of Representatives. February 15, 1886—Read twice, referred to the Committee on War Claims, and ordered to be printed.

Mr. Henley introduced the following bill:

#### A BILL

*For the relief of the State of California.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the provisions of the Act of Congress approved March second, eighteen hundred and sixty-one (United States Statutes, volume twelve, page one hundred and ninety-nine),*

be and the same are hereby extended to all Indian war claims arising in the State of California, and upon the borders thereof, between September ninth, eighteen hundred and fifty, and April fifteenth, eighteen hundred and sixty-one, and for which no provision has heretofore been enacted by Congress, or which have not been heretofore presented to the proper accounting officers of the Treasury; and the privilege is hereby granted to said State of presenting to the Secretary of the Treasury any new, additional, or corroboratory evidence in support of any of its Indian war claims heretofore filed; and said Secretary is hereby authorized and directed to examine the same, in connection with such evidence as may be already of record in his Department at the date of the passage of this Act, and to allow said State whatever amounts he may find equitably due to or expended by said State for any of the aforesaid purposes; *provided*, that any allowance for or on account of any or all of the foregoing matters shall be paid exclusively out of the unexpended balance of the appropriation made in said Act of March second, eighteen hundred and sixty-one, and now lapsed into the Treasury, and which unexpended balance is now hereby reappropriated.

SEC. 2. That the Secretary of the Treasury be and he is hereby authorized and directed to pay to the State of California any sum found by him, upon investigation, to be due her for balances heretofore paid or assumed and remaining due by said State on account of Indian war bonds, coupons, warrants, and certificates of indebtedness issued by her under the Acts of her Legislature approved February fifteenth, eighteen hundred and fifty-one, May third, eighteen hundred and fifty-two, and April twenty-fifth, eighteen hundred and fifty-seven, respectively, for the payment and defraying of the expenses incurred in the suppression of Indian hostilities, and matters in relation thereto arising in certain counties in said State, and upon the borders thereof; *provided*, that the amount so paid shall not exceed the sum of three hundred and thirty-five thousand and eighty-six dollars and eighty-eight cents, which sum is hereby appropriated out of any money in the Treasury not otherwise appropriated, the same to be paid to said State, and upon the condition only of the surrender by her to the Secretary of the Treasury of said bonds, coupons, warrants, and certificates of indebtedness, or payment to be made pro rata for any portion thereof; *provided further*, that the acceptance of the indemnity hereby provided shall operate as a final and complete discharge and satisfaction of all claims or matters hereinbefore referred to.

Forty-ninth Congress, first session. H. R. No. 8732.

In the House of Representatives. May 10, 1886—Read twice, referred to the Committee on Appropriations, and ordered to be printed.

Mr. Henley introduced the following bill:

#### A BILL

*To reappropriate an unexpended balance.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the unexpended balance of eight thousand three hundred and fifty-seven dollars and sixteen cents, of the appropriation made by Congress August fifth, eighteen hundred and fifty-four (tenth Statutes, pages five hundred and eighty-two and five

hundred and eighty-three), and Acts amendatory thereof and supplemental thereto, for the suppression of Indian hostilities in the State of California, and carried to the surplus fund, be and the same is hereby reappropriated; and the Secretary of the Treasury be and he is hereby authorized and directed to pay said sum to the State of California upon the surrender by said State to said Secretary of bonds in said sum issued in part payment of said expenses, and which have been heretofore redeemed and paid by her; and said sum shall be paid said State upon her furnishing the Secretary of the Treasury satisfactory evidence that said bonds to the amount of said unexpended balance, have been redeemed and paid by said State, under and by virtue of the authority of the Legislature thereof: *provided*, that no coupons attached to said bonds shall be paid said State for any interest whatsoever accruing subsequent to May third, eighteen hundred and sixty-two.

Forty-eighth Congress, second session. H. R. 8149.

In the House of Representatives. February 2, 1885—Read twice, referred to the Committee on Appropriations, and ordered to be printed.

Mr. Henley introduced the following bill:

#### A BILL

*To reappropriate the unexpended balance of an appropriation made by former Acts of Congress.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the sum of eight thousand three hundred and sixty-two dollars and sixteen cents, being an unexpended balance of an appropriation made by the Acts of Congress approved August fifth, eighteen hundred and fifty-four, and August eighteenth, eighteen hundred and fifty-six (United States Statutes, volume ten, pages five hundred and eighty-two and five hundred and eighty-three, and volume eleven, page ninety-one), "to refund to the State of California expenses incurred in suppressing Indian hostilities," which has heretofore lapsed and been covered into the Treasury, be and the same is hereby reappropriated; and the same shall be paid to the State of California upon her surrender to the Secretary of the Treasury the bonds and coupons aggregating said sums which have been heretofore redeemed and paid by said State on account of the suppression of the hostilities named in said Acts; *provided*, that the sums heretofore paid by the State of California on account of said hostilities which have not been heretofore repaid by the United States shall be refunded to said State, with interest at six per centum per annum from the dates of such payment by said State up to the date of the passage of this Act, and to be paid out of any money in the Treasury not otherwise appropriated, upon proper evidence of such payments by said State being furnished and filed by her with the Secretary of the Treasury.

#### EXHIBIT No. 24.

Forty-ninth Congress, first session. H. R. 5566.

Statement in support of H. R. No. 5566. Introduced February 15, 1886, by Hon. Barclay Henley of California, and referred to the Committee on War Claims—"A bill for the relief of the State of California."

*First*—The object of the first part of section *one* of said bill is to authorize an examination, by the Secretary of the Treasury, under a carefully prepared statute which Congress has heretofore enacted, such California Indian war claims as Congress has not as yet made any provision for; and to authorize said Secretary to receive and properly act upon any new and corroboratory evidence in support of any of its Indian war claims heretofore filed, and for which Congress did make provision in its Act of March 2, 1861 (U. S. Stat., vol. 12, page 199).

Congress in its Act of March 2, 1861 (U. S. Stat., vol. 12, p. 199), in naming *certain* counties, and in enumerating *certain* years therein, did great injustice thereby to the State of California, by thus omitting from its scope similar expenses incurred in *other* counties and in *other* years not named therein, and on account of Indian hostilities that had arisen in said State *prior* to March 2, 1861, the date of the passage of said Act. This omission evidently was the oversight at the time either of Congress or of California's delegation in Congress, but just now it is immaterial which.

The purpose now sought to be accomplished in this bill is to make said statute of March 2, 1861, sufficiently *general* so as to have it apply equally to all cases heretofore omitted therefrom, or such as were not provided for or included therein.

Congress on June 27, 1882, passed a *general* bill for the relief of the States of Texas, Kansas, Nebraska, Colorado, California, Oregon, Nevada, and the Territories of Washington and Idaho for such Indian war claims as arose in said States respectively *between April 15, 1861*, and the date of the passage of that Act. It would seem that these dates cover and include all the claims growing out of Indian hostilities arising in each and all of said States and Territories, *except* in the case of the State of California, in which particular State all the Indian war claims arose *prior* to April 15, 1861; and hence the object of the first section of this bill is to enable California to present to the Treasury Department for examination such claims of this class as arose in said State between September 9, 1850 (the date of the admission of California into the Union), down to April 15, 1861 (the date when said Act of June 27, 1882, began to operate).

There are a number of Indian war claims of California arising between said two dates, to wit: September 9, 1850, and April 15, 1861, and for which there has never as yet been made any provision of law by which they could be examined by any tribunal of the United States, or be reported upon to Congress, and they are as follows, to wit:

Mendocino Indian war claims of 1859.....	\$23,839 10
Washoe Indian war of 1859 and 1860.....	26,327 60
<i>From September 9, 1850, to April 15, 1861.</i>	
Various Indian war expenses.....	33,509 74
Claims supported by new evidence.....	53,871 25
Sundry items not enumerated, but estimated not in any event to exceed .....	31,822 55
	<hr/> \$169,470 24

And which aggregate is now the sum of the unexpended balance made by Congress in its said Act of March 3, 1861, and lapsed into the Treasury and now in the Surplus Fund, and which unexpended balance said section one now reappropriates. Equity and the uniform rule of Congress in similar matters would seem to demand this legislation *at this time*. No *new* or *additional* appropriation is asked for, but only the reappropriation of the unexpended balance which Congress has heretofore appropriated for this very class of claims, and which remains in the Treasury Department unexpended. See Exhibits "A," "B," and "C," hereto attached and made a part hereof.

This matter has heretofore been brought to the attention of Congress, and was brought to its notice as late as the Forty-eighth Congress, to wit: on February 24, 1884, by Hon. W. S. Rosecrans, by House Resolution No. 172 which was by him introduced, read twice, and referred to the honorable Committee on Military Affairs, and which committee, on March 18, 1884, made a favorable report thereon, to wit: House Report No. 807, Forty-eighth Congress, first session.

This Resolution, No. 172, was thereafter, to wit, on May 10, 1884, called up from the calendar for consideration by Mr. Rosecrans, and upon the *single objection* of Hon. W. S. Holman of Indiana, it went over; and was never thereafter acted upon or could ever be reached during the Forty-eighth Congress, and for want of time prior to its adjournment. Copy of said House Resolution, to wit, No. 172, and of House Report, to wit, No. 807, Forty-eighth Congress, first session, are hereto attached, marked respectively "D," and "E," and made a part hereof.

*Second*—The object of the second part of section one, said bill, is to finally clean up all matters relating to such Indian war claims of the State of California as Congress has heretofore partially provided for by appropriate legislation.

The examination by the Treasury Department of California's Indian war claims provided for in the aforesaid Act of March 2, 1861, was made and concluded on the twenty-first April, 1863, but not brought to the notice of the State of California until September 5, 1863, on which date, instead of paying California the sum of \$400,000, as provided for in said Act of March 2, 1861, there was paid to her by the Secretary of the Treasury only the sum of \$229,987 67, and as will more fully appear as per exhibit hereto attached and made part hereof.

Both of these dates, to wit: April 21, 1863, and September 5, 1863, were at a time when California's mails went by sea *only*, and that via the Isthmus of Panama. This was during the war period, and at a time when the officials of California administered the public affairs of said State in wooden rented apartments, the present State Capitol building not being then erected.

The State papers having been moved into the new Capitol and rearranged, the State officers of California, within the last three years, have discovered sundry written papers and documents constituting evidence, in the opinion of her people, of value to her, and which they now desire to use in support of various of their said Indian war claims provided for in said Act of March 2, 1861, and not allowed for the want of such evidence, and which evidence, under the rulings of the Treasury Department (the claims having been once examined and an account stated, but which California thinks was only *partial*) can only now be made available or used by authority or permission of Congress.

The necessity for this legislation is partially set forth in a letter from the Third Auditor, which original letter is hereto attached and now made a part hereof, and marked Exhibit "F."

The desire of the State of California to have Congress adjust the matter is set forth in concurrent resolution of the State of California, copy of which is hereto attached and now made a part hereof, and marked Exhibit "G."

The State of California submits, considering all the circumstances in these premises since September 5, 1863, when said Treasury statement was made, and the period of war, and the many and constant changes of officials in said State, and in Congress from said State, and other matters which will readily suggest themselves to the mind of the national legis-



lator, that she has not in any degree slept on any of her rights, but on the contrary, she has at the first proper opportunity, made her wants fully known and filed her petition for indemnity with Congress; and she further submits, that up to this time, Congress has not heeded her wants or her petition to the extent at least of enacting that legislation which she submits is adequate or sufficient, and needed to meet the condition of things now herein respectfully presented.

*Third*—The second section of this bill is intended to make full and final provision for all outstanding indebtedness growing out of Indian hostilities in California, represented by the particular bonds, coupons, warrants, and certificates of indebtedness issued in good faith by said State and in part redeemed and paid by her out of her State Treasury; and the payment of the balance of which has been by her assumed and now in the hands of *bona fide* holders for value, and none of which have as yet been redeemed or paid by the United States.

The subject-matter of this section of the bill was partially considered by the House Committee on War Claims in the Forty-seventh Congress, second session, and by it favorably reported January 11, 1884, by Hon. George W. Geddes, its Chairman, copy of which report is now herewith submitted and made a part hereof and marked "H." The pending bill provides, therefore, for all claims of the State of California, growing out of Indian hostilities therein that have heretofore arisen in said State, and for which no adequate provision has heretofore been made by Congress.

The history of the issuance of these bonds, and the reasons why they are still outstanding, unredeemed and unpaid by the United States, are sufficiently set forth in said House Report, No. 1847, and which now would not seem to demand any further extended notice.

Those of said bonds which have heretofore been paid by the State of California have been presented by her to the Treasury Department for payment, but payment has been refused for want of authority of law to pay the same, and as will fully appear from copy of letter of the Third Auditor of the Treasury of August 18, 1885, herewith submitted and made a part hereof and marked "I."

Congress has several times recognized the validity of these bonds and of its obligation to pay the same, and it has made provision for the redemption and payment thereof, and as will more fully appear by reference to the statutes as follows, to wit:

U. S. Statutes, vol. 10, pages 582-583.

U. S. Statutes, vol. 11, page 91.

U. S. Statutes, vol. 12, page 104.

U. S. Statutes, vol. 15, page 175.

U. S. Statutes, vol. 21, pages 510-511.

Showing that it has from time to time made provision for the redemption thereof, whenever heretofore properly presented for payment and as shown by Exhibits "K," "L," "M," "N."

The State of California does not ask payment for any interest in these premises on any moneys expended or advanced by her to the United States, but simply asks to be reimbursed and refunded the principal which in good faith she has paid and assumed on account of said bonds, etc.

The second section of this bill does not authorize any payment to the State of California for any bond, coupon, warrant, or certificate of indebtedness except in those cases where the same shall have been previously paid by the State of California, and then only upon the surrender of same by said State to the United States, with the evidence of such payment thereof respectively by her, and not otherwise.

The amount of this indebtedness, without interest, is now \$335,186 88, which when paid will finally clean up every claim of this class of the State of California on account of Indian hostilities that have arisen therein and not heretofore paid.

This bill might be further amended by declaring therein that all matters therein provided for should be presented by said State to the Secretary of the Treasury within two years from the date of the passage of this bill.

I suggest the limitation of *two years* herein; and because, if this bill passes before the first Monday in January, 1887 (on which day the Legislature of California next meets), that State can take action thereon as to all matters herein which she has not heretofore paid. But should this bill not pass before the first Monday of January, 1887 (the Legislature of California not meeting thereafter until two years therefrom), a proper length of time should be given the Legislature of California to make final provision of calling in this indebtedness, meeting it, and presenting the same to the proper authorities of the United States, and which proper time in this case is two years.

Respectfully submitted.

JOHN MULLAN,  
Agent for the State of California.

WASHINGTON CITY, February 22, 1886.

## EXHIBIT No. 25.

Forty-ninth Congress, first session. H. R. 5566. Report No. 1298.

In the House of Representatives. February 15, 1886—Read twice, referred to the Committee on War Claims, and ordered to be printed. March 23, 1886—Reported with amendments, committed to the Committee of the Whole House on the state of the Union, and ordered to be printed. (Omit the parts struck through and insert the parts printed in *italics*.)

Mr. Henley introduced the following bill:

## A BILL

*For the relief of the State of California.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the provisions of the Act of Congress approved March 2, 1861 (United States Statutes, volume 12, page 199), be and the same are hereby extended to all Indian war claims arising in the State of California, and upon the borders thereof, between September 9, 1850, and April 15, 1861, and for which no provision has heretofore been enacted by Congress, or which have not been heretofore presented to the proper accounting officers of the Treasury; including any sum, on investigation found due her for balances heretofore paid, or assumed and remaining due, by said State, and not hereinbefore or in said Act of 1861 included, or which, or the indebtedness out of which the same arose, have not been heretofore paid or adjusted between the said State of California and the United States, on account of Indian war bonds, warrants, and certificates of indebtedness issued by her under the Acts of her Legislature, approved February 15, 1851, May 3, 1852, and April 25, 1857, respectively, for the payment and defraying of the expenses incurred in the suppression of Indian hostilities, and matters in relation thereto, arising in certain counties in said State, and upon*

*the borders thereof; the same to be paid to said State, and upon the condition only of the surrender, by her to the Secretary of the Treasury, of said bonds, warrants, and certificates of indebtedness or payment to be made pro rata for any portion thereof; provided further, that the acceptance of the indemnity hereby provided shall operate as a final and complete discharge and satisfaction of all claims or matters hereinbefore referred to; provided further, that any allowance for or on account of any or all of the foregoing matters shall be paid exclusively out of the unexpended balance of the appropriation made in said Act of March 2, 1861, and now lapsed into the Treasury, and which unexpended balance is now hereby appropriated.*

Forty-ninth Congress, first session. H. R. Report No. 1298.

### THE STATE OF CALIFORNIA.

March 26, 1866—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Lyman, from the Committee on War Claims, submitted the following

#### REPORT.

[To accompany bill H. R. 5566.]

The Committee on War Claims, to whom was referred the bill (H. R. 5566) for the relief of the State of California, have had the same under consideration, and make the following report:

(1) March 2, 1861, Congress passed an Act (12 Statutes at Large, 199) intending, no doubt, to enable that State (California) thereunder to adjust all her claims against the Government for expenses incurred in her various Indian wars. But through some mistake or misapprehension, it was so narrow in its terms that only a portion of the expenses of the Indian wars, which had been borne by said State, could be or were adjusted thereunder, and the first object of this bill now under consideration is to extend the provisions of that Act so as to allow the adjustment of her claims for Indian wars not in said Act of 1861 provided for.

(2) The bill also asks that the cases already filed and coming under the Act of 1861, may be reopened and the State be allowed to present new, additional, or corroboratory evidence in support thereof and a new adjustment made.

(3) It appears that the State of California has, under various Acts of her Legislature, at different times, issued Indian war bonds, coupons, warrants, and certificates of indebtedness, some of which she has paid and some of which have been paid by the United States Government, and it is now sought by the provisions of this bill that she be reimbursed for the same.

Your committee think that the first of the foregoing purposes of the bill is just and proper, and recommend its adoption.

As to the second, the committee think, inasmuch as the cases therein mentioned have been adjusted and disposed of, that it would be bad policy to again open the same, and they report adversely thereon.

As to the third proposition, the committee say that in so far as the matters therein provided for are not covered by the Act of 1861, or by this Act, the same is just and should be adopted, except so far as the same relates to the payment of interest, or interest coupons, which should be stricken out in pursuance of the well established policy of the Government.

The committee therefore recommend the passage of the Act with the following amendments:

(1) Strike out of first section that part thereof after the word "Treasury," in the twelfth line, down to and including the word "purposes," in the twenty-first line; and,

(2) Insert after the word "Treasury," in the twelfth line, of the first section, the following: "Including any sum on investigation found due her for balances heretofore paid, or assumed and remaining due by said State, and not hereinbefore or in said Act of 1861 included, or which, or the indebtedness out of which the same arose, have not been heretofore paid or adjusted between the said State of California and the United States, on account of Indian war bonds, warrants, and certificates of indebtedness issued by her under the Acts of Legislature approved February 15, 1851, May 3, 1852, and April 25, 1857, respectively, for the payment and defraying of the expenses incurred in the suppression of Indian hostilities, and matters in relation thereto arising in certain counties in said State, and upon the borders thereof; the same to be paid to said State, and upon the condition only of the surrender by her to the Secretary of the Treasury of said bonds, warrants, and certificates of indebtedness, or payment to be made pro rata for any portion thereof; provided further, that the acceptance of the indemnity hereby provided shall operate as a final and complete discharge and satisfaction of all claims or matters hereinbefore referred to."

(3) Insert after the word "provided," in the twenty-first line of the first section, the word "further."

(4) Strike out the second section of the bill.

### EXHIBIT No. 26.

[Copy.]

TREASURY DEPARTMENT, }  
March 20, 1886. }

Hon. BARCLAY HENLEY, *House of Representatives:*

SIR: In reply to your communication of the nineteenth instant, asking what amount of the appropriation made by Congress by Act of August 5, 1854, and subsequent Acts, for the suppression of Indian hostilities in California, remains unexpended, I have the honor to inform you that the Act of August 5, 1854 (10 Stat., 582), as modified by Acts of August 18, 1856 (11 Stat., 91), and June 23, 1860 (12 Stat., 104), appropriated \$924,259 65 to redeem California war bonds issued for expenses incurred prior to January 1, 1854. Of this sum \$10,188 63 was carried to the surplus fund June 30, 1863.

The Act of July 25, 1868, reappropriated the amount of \$10,183 63, but only one claim for \$538 11 was paid therefrom, and the remainder, \$9,645 52, was carried to the surplus fund on July 1, 1874.

The Act of March 3, 1881 (21 Stat., 510), reappropriated a sufficient sum to pay four bonds described in said Act, and for that purpose the sum of \$1,288 36 was reappropriated.

The balance remaining in the surplus fund can not be used for further payments on this account without additional authority from Congress.

Respectfully yours,

W. E. SMITH,  
Assistant Secretary.

[Copy.]

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE, }  
WASHINGTON, D. C., May 5, 1886. }

Hon. C. F. FAIRCHILD, *Acting Secretary of the Treasury:*

SIR: I return the communication addressed you by Hon. Barclay Henley, M. C., on fourth instant, relative to the California war bonds, for the payment of which provision was made by the Act of August 5, 1854, as amended by Acts of August 18, 1856, and June 23, 1860.

As there yet remains unpaid bonds to a greater amount than the balance in the surplus fund (\$8,357 16), I see no reason why such balance should not be made available by reappropriation. It would, however, be unjust to make the reappropriation applicable specially to the bonds redeemed and now held by the State, as there is good reason to believe that some bonds are held by private parties. All holders, whether the State or individuals, should stand upon a common footing, applying to all the natural rule of payment as the bonds shall be presented, so long as the fund holds out.

Provision should be made fixing the date to which interest should be allowed. I suppose the fact to be that the exhibit first submitted by the State to Congress computed the aggregate of the then ascertained expenses, inclusive of interest to January 1, 1854, to be \$924,259 65, and that this was the basis upon which the appropriation of that sum, as a maximum, was made by the Act of August 5, 1854. (10 Statutes, 5823.)

At all events, the California Commissioners referred to in Act of Congress of August 18, 1856 (11 Statutes, 91), seem to have known that said sum would suffice to pay the bonds with interest only to January 1, 1854; and in all their awards they limited the allowance of interest to that date. Hence the vast majority of the bonds were paid upon that basis. Under the peculiar wording of the Act of June 23, 1860, interest upon the few bonds paid under it was allowed to July 1, 1860.

By Act of August, 1854, Congress proffered to the State reimbursement of such expenses as it should prove to have been incurred, not exceeding the maximum named. But, the State being dissatisfied with this proposition, Congress, two years later, at the instance of the State, by the Act of August, 1856, offered to redeem the bonds issued by the State, and made the fund before appropriated applicable to that purpose. The opportunity was therefore given to all bondholders to present their bonds at once. Although there was no specific limitation as to the time in which bonds should be presented, I think it was not contemplated by the Act of 1856 to offer to a bondholder the privilege of holding his bond indefinitely, up to the expiration of its terms, and drawing interest thereon from the United States for the period during which he might desire to hold the same as a safe and profitable investment; and the appropriation would have fallen far short of payment upon that basis.

In my judgment, interest ought not to be allowed for any period after the United States had offered to redeem the bonds and had provided a fund for that purpose.

Very respectfully,

JNO. S. WILLIAMS,  
Auditor.

[Copy.]

TREASURY DEPARTMENT, }  
June 22, 1886. }

Hon. BARCLAY HENLEY, *House of Representatives*:

SIR: In reply to your communication of the nineteenth instant, requesting copies of letters heretofore sent to you in regard to the unexpended balance of appropriations made for suppressing Indian hostilities in California, I have the honor to inclose copy of Department's letter of March 20, 1886, and of the Third Auditor's letter of May 5, 1886.

Respectfully yours,

W. E. SMITH,  
Assistant Secretary.

[Copy.]

TREASURY DEPARTMENT, July 2, 1886.

Hon. BARCLAY HENLEY, *House of Representatives*:

SIR: In reply to your communication of yesterday's date, I have the honor to inform you that of the \$400,000 appropriated by the Act of March 2, 1861 (12 Stat. p. 199), for payment to the State of California for expenses incurred in suppressing Indian hostilities in the years 1854-55-56-58-59, the sum of \$169,470 24 remained unexpended and was carried to the Surplus Fund on the thirtieth of June, 1864.

Respectfully yours,

C. S. FAIRCHILD,  
Acting Secretary.

EXHIBIT No. 26½.

HOUSE OF REPRESENTATIVES UNITED STATES, }  
WASHINGTON, D. C., March 31, 1886. }

Hon. SAMUEL J. RANDALL, *Chairman Committee on Appropriations, and Chairman Sub-Committee in charge of the Sundry Civil Appropriation Bill*:

MY DEAR SIR: *First*—I have the honor to inclose you herewith an item which I respectfully ask may be included by you in the "Sundry Civil Appropriation Bill" when reported to the House from your honorable Committee on Appropriation.

*Second*—Also, find herewith an original letter dated March 20, 1886, from the Assistant Secretary of the Treasury, setting forth that the sum named in my said inclosed item, to wit, \$8,357 16, is now an unexpended balance in the Treasury, but which balance cannot be made available for the benefit of the State of California without additional authority from or legislation by Congress. Hence, this my request as herein made, and the legal necessity thereof at this time.

During the Forty-eighth Congress I made a request similar to the foregoing, but it seems to have been inadvertently overlooked.

I shall be gratified, therefore, if you and your Committee on Appropriation will be kind enough to give this matter special consideration at this time by having this provision inserted in your "Sundry Civil Appropriation Bill," and oblige,

Yours, very respectfully,

BARCLAY HENLEY,  
M. C. from California.

HOUSE OF REPRESENTATIVES UNITED STATES, }  
WASHINGTON, D. C., March 31, 1886. }

"That the unexpended balance of eight thousand three hundred and fifty-seven dollars and sixteen cents of the appropriation made by Congress July 25, 1868 (U. S. Stats., vol. 15, p. 175), to refund to the State of California expenses incurred in suppressing Indian hostilities," and carried to the Surplus Fund, be and the same is hereby reappropriated; and the Secretary of the Treasury is hereby authorized and directed to pay said sum to the State of California upon the surrender by her to said Secretary of the bonds issued by her in payment of said expenses, and which bonds have been heretofore redeemed and paid by said State in said sum and not heretofore paid by the United States, and the aforesaid sum shall be paid to said State upon her furnishing the Secretary of the Treasury satisfactory evidence that said bonds so issued have been redeemed, paid, and canceled by said State, under and by the authority of the Legislature thereof, to the extent of said unexpended balance.

HOUSE OF REPRESENTATIVES UNITED STATES,  
WASHINGTON, D. C., May 7, 1886. }

Hon. SAMUEL J. RANDALL, *Chairman Committee on Appropriations, U. S. House of Representatives:*

SIR: Inclosed herewith please find a *memorandum*, which I ask may, by your honorable Committee on Appropriations, be inserted as an item in the *Sundry Civil Appropriation Bill*, Forty-ninth Congress, first session. In support whereof please find the letter of the Treasury Department of May 6, 1886, inclosing the report of the honorable Third Auditor of May 5, 1886, recommending that said sum of \$8,357 16 be *reappropriated*.

Respectfully,

BARCLAY HENLEY,  
M. C. from California.

HOUSE OF REPRESENTATIVES UNITED STATES,  
WASHINGTON, D. C., June 5, 1886. }

Hon. SAMUEL J. RANDALL, *Chairman Committee on Appropriations:*

SIR: I invite your attention to the following statement of facts:

*First*—There is now in the Treasury, heretofore appropriated by Congress, an unexpended balance of \$8,357 16, and which having been carried into the Surplus Fund, has to be reappropriated in order to be available for the State of California. (See Exhibits Nos. 1 and 2 herewith.) This information you will perceive is contained in a report to me by the honorable Secretary of the Treasury, under date of March 20, 1886, May 6, 1886, and May 5, 1886.

*Second*—I thereupon submitted said information to your honorable Committee, with request that there be inserted in the "Sundry Civil Appropriation Bill" an item to *reappropriate* said \$8,357 16 for the purposes for which the original appropriation was made by Congress.

*Third*—Upon doing this I was given to understand that such information should reach your committee through the Speaker of the House.

*Fourth*—Wherefore on tenth May, 1886, I, in the House, introduced a resolution calling formally again upon the Secretary of the Treasury for this information, so that it and the reply thereto should reach your committee through the Speaker.

*Fifth*—The resolution was referred to the War Claim Committee, and I learn that upon that committee's communicating with the Treasury Department, it is informed that the information sought by said resolution had already been communicated to me, and that said War Claim Committee seems to be at a loss to know why this peculiar (red tape riding around Robin Hood's barn) proceeding is necessary—a matter which I myself think should not make any rules of the House, or of any committees, be rendered necessary. The *one object being* is, that of getting before your honorable Committee on Appropriations the official facts, as contained in the Report of the Secretary of the Treasury of twentieth March, 1886, and fifth and sixth of May, 1886.

Wherefore I now very respectfully ask your honorable Committee to take cognizance of said report of the honorable Secretary of the Treasury, and that you may be pleased to have inserted in the *Sundry Civil Appropriation Bill* an item as follows, to wit:

That the unexpended balance of \$8,357 16 of the appropriation made by Congress August 5, 1854 (10 Statutes, 582), as supplemented by Acts of August 18, 1856 (11 Statutes, 91), and June 23, 1860 (12 Statutes, 104), and July 25, 1868 (15 Statutes, 175), and March 3, 1881 (21 Statutes, 510), be and the same is hereby reappropriated; and the Secretary of the Treasury is hereby authorized and directed to pay said sum to the State of California, upon the surrender by her to said Secretary of bonds issued by her in payment of the expenses referred to in said Acts, which have been heretofore redeemed and paid by said State in said sum, and not heretofore paid by the United States; and the aforesaid sum shall be paid said State upon her furnishing said Secretary with satisfactory evidence that bonds so issued have been redeemed, paid, and canceled by said State, under and by the authority of the Legislature thereof, to the extent of said unexpended balance; *provided*, that no payment be made for any sum earned by said bonds after May 3, 1862.

In view of all the foregoing, and the equity now due to the State of California in these premises, I now ask that this matter have your careful consideration, and that of your honorable Committee on Appropriations, at this time.

Respectfully,

BARCLAY HENLEY,  
M. C. from California.

## EXHIBIT No. 27.

Forty-ninth Congress, first session. H. R. 5543.

In the Senate of the United States. April 6, 1886—Referred to the Committee on Appropriations and ordered to be printed.

## AMENDMENT

Intended to be proposed by Mr. Stanford to the bill (H. R. 5543) making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and eighty-seven, and for other purposes, viz.: Insert the following:

That the unexpended balance of eight thousand three hundred and fifty-seven dollars and sixteen cents of the appropriation made by Congress July twenty-fifth, eighteen hundred and sixty-eight (United States Statutes, volume fifteen, page one hundred and seventy-five), "to refund to the State of California expenses incurred in suppressing Indian hostilities," and carried to the surplus fund, be and the same is hereby reappropriated; and the Secretary of the Treasury is hereby authorized and directed to pay said sum to the State of California upon the surrender by her to said Secretary of the bonds issued by her in payment of said expenses, and which bonds have been heretofore redeemed and paid by said State in said sum, and not heretofore paid by the United States; and the aforesaid sum shall be paid to said State upon her furnishing the Secretary of the Treasury satisfactory evidence that said bonds so issued have been redeemed, paid, and canceled by said State, under and by the authority of the Legislature thereof, to the extent of said unexpended balance.

**EXHIBIT No. 28.**

Before the Forty-ninth Congress, first session.

**STATEMENT IN SUPPORT OF THE AMENDMENT TO THE DEFICIENCY APPROPRIATION BILL AS PROPOSED BY SENATOR HEARST OF CALIFORNIA.**

Said amendment being as follows, to wit: Forty-ninth Congress, first session. H. R. 9726.

In the Senate of the United States. July 3, 1886—Referred to the Committee on Appropriations, and ordered printed.

Amendment intended to be proposed by Mr. Hearst to the bill (H. R. 9726) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June thirtieth, eighteen hundred and eighty-six, and for prior years, and for other purposes, viz.: Insert the following:

That so much of the unexpended balances of the appropriations made by Congress under the Acts approved August fifth, eighteen hundred and fifty-four (tenth Statutes, page five hundred and eighty-two), and August eighteenth, eighteen hundred and fifty-six (eleventh Statutes, page ninety-one), and March second, eighteen hundred and sixty-one (twelfth Statutes, page one hundred and ninety-nine), as may be necessary therefor, be and the same are hereby reappropriated; and the Secretary of the Treasury is hereby authorized and directed to pay said sums to the State of California upon the surrender by her to said Secretary of bonds issued by her in payment of expenses incurred by her in the suppression of Indian hostilities in said State prior to March second, eighteen hundred and sixty-one, and which bonds have been heretofore redeemed and paid by said State in said sums, and not heretofore paid or redeemed by the United States; and the aforesaid sums shall be paid to said State only upon the condition of furnishing said Secretary with evidence satisfactory to him that the bonds so issued have been redeemed, paid, and canceled by the State officers of said State under and by authority of the Legislature thereof, and to the extent of said unexpended and reappropriated balances; *provided, however*, that no payment shall be made by said Secretary to said State for any sums earned by said bonds after May third, eighteen hundred and sixty-two.

The object of this amendment is to reimburse the State of California in the sum of \$53,234 90 for and on account of certain California Indian war bonds, aggregating that sum, which were issued by said State in payment of expenses incurred by her in the suppression of Indian hostilities therein prior to March 2, 1861, and which bonds subsequent thereto were paid and redeemed and canceled by the proper State officers of said State acting therein under the authority of the Legislature thereof, and which bonds have never heretofore been paid or redeemed by the United States; the same to be paid out of the unexpended balances of the appropriations heretofore made by Congress, and which balances have lapsed and been heretofore carried into the surplus fund.

Of the appropriations made by Congress in its Act of August 5, 1854 (10 Statutes, page 582), and the same repeated in its Act of August 18, 1856, (11 Statutes, page 91), there now remains unexpended and available for this purpose, but carried into the surplus fund, and which the Secretary of the Treasury states cannot be used for further payment on this account without additional authority from Congress, the sum—

As per Exhibit "A" herewith, of.....	\$8,357 16
As per Exhibit "B" herewith, of.....	169,470 24
Making a total of said unexpended balances of.....	\$177,827 40
And of which amount it is now proposed by said amendment to reappropriate the sum of.....	\$53,234 90

**EXHIBIT A.**

TREASURY DEPARTMENT, March 20, 1886.

*Hon. BARCLAY HENLEY, House of Representatives:*

SIR: In reply to your communication of the nineteenth instant, asking what amount of the appropriation made by Congress by Act of August 5, 1854, and subsequent Acts for the suppression of Indian hostilities in California, remains unexpended, I have the honor to inform you that the Act of August 5, 1854 (10 Stat., 582), as modified by Acts of August 18, 1856 (11 Stat., 91), and June 23, 1860 (12 Stat., 104), appropriated \$924,259 65 to redeem California war bonds issued for expenses incurred prior to January 1, 1854. Of this sum \$10,188 63 was carried to the surplus fund June 30, 1863.

The Act of July 25, 1868, reappropriated the amount of \$10,183 63, but only one claim for \$538 11 was paid therefrom, and the remainder—\$9,645 52—was carried to the surplus fund on July 1, 1874.

The Act of March 3, 1881 (21 Stat., 510), reappropriated a sufficient sum to pay four bonds described in said Act, and for that purpose the sum of \$1,288 36 was reappropriated.

The balance remaining in the surplus fund cannot be used for further payments on this account without additional authority from Congress.

Respectfully yours,

W. E. SMITH, Assistant Secretary.

**EXHIBIT B.**

TREASURY DEPARTMENT, July 2, 1886.

*Hon. BARCLAY HENLEY, House of Representatives:*

SIR: In reply to your communication of yesterday's date, I have the honor to inform you that of the \$400,000 appropriated by the Act of March 3, 1861 (12 Stat., p. 199), for payment to the State of California for expenses incurred in suppressing Indian hostilities in the years 1854, 1855, 1856, 1858, and 1859, the sum of \$169,470 24 remained unexpended, and was carried to the surplus fund on the thirtieth of June, 1864.

Respectfully yours,

C. S. FAIRCHILD, Acting Secretary.

Of the Indian war bonds issued by the State of California under its Act of February 15, 1851, the sum as paid by said State is.....	\$2,190 00
And of the Indian war bonds issued by the State of California under its Act of May 3, 1852, the sum as paid by said State is.....	36,580 48
And of the Indian war bonds issued by the State of California under its Act of April 25, 1857, the sum as paid by said State is.....	14,464 42

Making, as aforesaid, a total aggregate of..... \$53,234 90

All of these bonds were redeemed and paid and canceled by the State of California subsequent to the dates when said unexpended balances lapsed into the Treasury, and none of same were in her possession prior to said date, after the issue thereof.

These bonds from time to time have been heretofore redeemed and paid by the State of California, under special Acts of her Legislature, as the same were presented to her by the holders thereof, said State relying, as she did then and does now, upon the good faith of the United States to redeem and pay the same upon presentation by her, and as others have been heretofore paid by the United States whenever presented.

The United States has sustained no loss whatever by virtue of the non-presentation thereof prior to this date, and whatever loss there has been sustained in these premises, and by virtue of a presentation thereof only at this date has been that of the State of California, and not otherwise.

Wherefore, in view of the foregoing facts, it is respectfully suggested and now submitted that said amendment might be appropriately changed so as to read as follows, to wit:

That the sum of \$8,357 16, being the unexpended balance of the appro-

priation made by Congress, under the Acts approved August 5, 1854 (10 Stat. p. 582), and August 18, 1856 (11 Stat. p. 91), and the sum of \$44,877 74 of the unexpended balance of the appropriation made by Congress under the Act approved March 2, 1861 (12 Stat. p. 199), be and the same are hereby reappropriated; and the Secretary of the Treasury is hereby authorized and directed to pay said sums to the State of California, upon the surrender by her to said Secretary, of bonds issued by her in payment of expenses incurred by her in the suppression of Indian hostilities in said State prior to March 2, 1861, and which bonds have been heretofore redeemed and paid by said State in said sums, and not heretofore paid or redeemed by the United States; and the aforesaid sums shall be paid to said State only upon the condition of furnishing said Secretary with evidence satisfactory to him, that bonds so issued have been redeemed, paid, and canceled by the State officers of said State under and by the authority of the Legislature thereof, to the extent of said unexpended and reappropriated balances; *provided, however*, that no payment shall be made by said Secretary to said State for any sums earned by said bonds after May 3, 1862.

Respectfully submitted.

JOHN MULLAN,  
Agent and Attorney for the State of California.

#### EXHIBIT No. 29.

Forty-ninth Congress, first session. H. R. 5209.

In the House of Representatives. February 8, 1886—Read twice, referred to the Committee on Indian Affairs, and ordered to be printed.  
Mr. Henley introduced the following bill:

#### A BILL

*In relation to Indian depredations.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Court of Claims shall have power to hear and determine all claims for depredations committed by Indians arising under section seventeen of the Act of Congress of June thirtieth, eighteen hundred and thirty-four, entitled "An Act to regulate trade and intercourse with the Indian tribes and to preserve peace on the frontiers."*

SEC. 2. That the Secretary of the Interior, or the Secretary of the Senate, or the Clerk of the House of Representatives, as the case may be, shall transmit to the Court of Claims for adjudication all claims heretofore presented to the Interior Department or to Congress, with all vouchers, papers, proofs, and documents pertaining thereto, and the same shall be there proceeded in under such rules as said Court may adopt.

SEC. 3. That the Attorney-General, or his assistants under his direction, shall appear therein to defend the United States and the Indians in all such actions, with the same power to interpose counter-claims, offsets, defenses for fraud and other defenses as now given in said Court.

SEC. 4. That the same right of appeal to the Supreme Court of the United States existing in other cases in the Court of Claims shall exist in the cases considered under this Act.

SEC. 5. That no person shall be excluded from testifying in cases under this Act on account of being a party or interested; and the affidavits and other evidence heretofore filed in Congress or in the departments in such cases may be considered by said Court, and such weight shall be given to such evidence as the Court may deem proper.

SEC. 6. That in all cases where the depredation was committed by a tribe of Indians, or by members of a tribe, to which annuities are due from the United States, the Court of Claims shall make said fact a part of their judgment.

SEC. 7. That in all cases where the Court shall find in accordance with the preceding section, that annuities are due, the amount of the judgments shall be deducted and paid from said annuities; and if there be no annuities due, then the amount of the judgments shall be charged against the tribe of Indians by which, or by members of which, the depredations were committed, and the same shall be deducted and paid from any funds which may be or become due to said Indians from the sale of their lands or from any appropriation that may be made for the benefit of such tribe, other than appropriations for their current and necessary subsistence, support, and education; and if there be no such fund or appropriation available, then the same shall be paid out of the public Treasury.

SEC. 8. That in all said claims arising six years or more prior to the passage of this Act, whether heretofore presented or not, a petition shall be presented to the Court within three years from the date hereof, and not thereafter; and in all such claims arising less than six years prior to the date hereof, or which may hereafter arise, a petition shall be so presented within six years from the date of such depredation, and not thereafter; and all claims for Indian depredations not so presented within the time limited by this section shall be forever barred, and shall not be considered by any department of the Government.

Forty-ninth Congress, first session. H. R. 8080.

In the House of Representatives. April 19, 1886—Read twice, referred to the Committee on Indian Affairs, and ordered to be printed.  
Mr. Henley introduced the following bill:

#### A BILL

*Making an appropriation for the purpose of paying Indian depredation claims which have been audited and approved by the Secretary of the Interior and reported to Congress.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That there be and hereby is appropriated, out of any money in the Treasury not otherwise appropriated, the sum of five millions of dollars, or so much thereof as may be necessary to pay the Indian depredation claims which have been heretofore filed and investigated under the direction of the Secretary of the Interior and reported by him to Congress, in pursuance of the laws of Congress, and in accordance with the rules and regulations prescribed by the Secretary of the Interior.*



In the House of Representatives. April 19, 1886—Read twice, and to the Committee on Indian Affairs, and ordered to be printed.  
Mr. Henley introduced the following bill:

### A BILL

*In relation to Indian depredations.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the Court of Claims shall have power to hear and determine all claims for depredations committed by Indians embraced within the terms of section twenty-one hundred and fifty-six of the Revised Statutes, whether the said claims have been heretofore presented to the Interior Department or Congress or not.

SEC. 2. That the Secretary of the Interior, or the Secretary of the Senate, or the Clerk of the House of Representatives, as the case may be, shall, immediately after the passage of this Act, transmit to the Court of Claims for adjudication all claims for Indian depredations heretofore presented to the Interior Department or to Congress, with all vouchers, papers, proofs, and documents pertaining thereto, and upon the presentation of a petition on behalf of any claimant within the time hereinafter limited, the same shall be there proceeded in under such rules as said Court may adopt.

SEC. 3. That the Attorney-General, or his assistants under his direction, shall appear therein to defend the United States and the Indians in all such actions, with the same power to interpose counter-claims, offsets, defenses for fraud, and other defenses as now given in said Court.

SEC. 4. That the same right of appeal to the Supreme Court of the United States existing in other cases in the Court of Claims shall exist in the cases considered under this Act.

SEC. 5. That no person shall be excluded from testifying in cases under this Act on account of being a party or interested; and the affidavits and other evidence heretofore filed in Congress or in the departments in such cases may be considered by said Court, and such weight shall be given to such evidence as the Court may deem proper.

SEC. 6. That the Court of Claims shall, in every judgment rendered under this Act, find the tribe of Indians by which, or by members of which, the depredation was committed, and whether annuities or other funds are due to said tribe from the United States.

SEC. 7. That the amount of any judgment so rendered shall be charged against the tribes by which, or by members of which, the Court shall find that the depredation was committed, and shall be deducted and paid in the following manner: First, from any annuities due said tribe from the United States; second, if no annuities are due or available, from any other funds due said tribe from the United States, arising from the sale of their lands or otherwise; third, if no such funds are due or available, from any appropriations for the benefit of said tribe, other than appropriations for their current and necessary support, subsistence, and education; and, fourth, if no such annuity, fund, or appropriation is due or available, the amount of the judgment shall be paid from the public Treasury; *provided*, that any amount so paid from the public Treasury shall remain a charge against such tribe, and shall be deducted from any annuity, fund, or appropriation hereinbefore designated which may hereafter become due from the United States to such tribe.

SEC. 8. That in all said claims which have arisen prior to the passage of this Act, whether heretofore presented or not, a petition on behalf of the claimant shall be presented to the Court within three years from the date hereof, and not thereafter; and in all such claims arising less than six years prior to the date hereof, or which may hereafter arise, such petition shall be so presented within six years from the date of such depredation, and not thereafter; and all claims for Indian depredations not so presented within the time limited by this section shall be forever barred, and shall not be considered by any department of the Government.

[Report No. 3117.]

In the House of Representatives. June 30, 1886—Read twice, committed to the Committee of the Whole House on the state of the Union, and ordered to be printed.

Mr. Hailey, from the Committee on Indian Affairs, reported the following bill as a substitute for H. R. No. 7849:

### A BILL

*To establish a Board of Commissioners to examine, adjust, and report on all claims arising out of Indian treaties and depredations committed by Indians, and for other purposes.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the President of the United States is hereby authorized and directed to appoint, by and with the advice and consent of the Senate, three Commissioners, who shall each hold office until the completion of the work hereinafter assigned to them, unless sooner removed by the President. Said Commissioners shall be designated by the President as the Board of Indian Depredation Claims, one of which he shall designate as Chairman of said Board. They shall perform the duties hereinafter prescribed. They shall each receive an annual salary of three thousand dollars, to be paid in monthly payments. In addition to their salary they shall each receive their necessary traveling expenses while in the performance of their duty. They shall each take the usual oath of office before entering upon the discharge of their duties. They shall have power to summon witnesses, administer oaths, and make all such needful rules and regulations as they may find necessary to carry out the objects of this Act and to preserve order. Any two of said Commissioners shall constitute a quorum to do business, and they shall hold their regular sessions in the city of Washington, District of Columbia; but they may hold special sessions in the Indian Territory, or at such other place or places as they may deem best, to obtain information and evidence to enable them to arrive at just conclusions; and in that case each one may act separately, if so decided upon by the full Commission, but such separate action shall be submitted to the Commission in general session.

SEC. 2. That the Secretary of the Interior shall provide a suitable office, with necessary office furniture and stationery, in or as near the Interior Department, in Washington, District of Columbia, as practicable, for said Board of Indian Depredation Claims. The Secretary of the Interior and the Secretary of War are hereby directed to deliver, or cause to be delivered,

to the Chairman of said Board, all of the claims for depredations committed by Indians against whites or their property, or by whites against Indians or their property, and all other papers containing statements or proofs in support of or against said claims that are on file in their Departments, together with such information as they are in possession of touching the validity of such claims. The Secretary of the Interior is hereby authorized and directed to furnish said Board with a competent clerk, who shall be a stenographer, and whose annual pay shall be two thousand dollars, payable in monthly payments. The Secretary shall also furnish them with a competent messenger, whose annual pay shall be eight hundred dollars, payable in monthly payments.

SEC. 3. That as soon as said Board shall have received the claims and other papers provided for in section two of this Act, they shall proceed to the performance of their duties as provided for herein. They shall examine each claim separately, including all proofs on file for or against or that may be offered for or against such claims, and decide on the amount due, if any, from the Government of the United States or from Indian tribes under existing laws or treaty stipulations, and to whom due. Each claim, with all proofs and their decision thereon, shall be kept in separate packages; and a record of their decision in each case shall be entered in a book to be kept for that purpose by their clerk, showing the number of the claim, the name and residence of the claimant, the nature of the claim, the time and place where it accrued, the amount claimed, and the amount allowed, if any.

SEC. 4. That the Board of Indian Depredation Claims is hereby authorized and directed to examine and allow, upon satisfactory proof, not to exceed the cash value at the time of the loss of the property in the locality where such loss occurred, all of the following claims, and no others:

*First*—For property of citizens of the United States which was unlawfully taken or destroyed by Indians, without just cause or provocation on the part of the owner or agent in charge, and not returned or paid for.

*Second*—For property unlawfully taken or destroyed by whites from peaceable Indians, without just cause or provocation on the part of the owner or agent in charge, and not returned or paid for; *provided*, that no claim shall be allowed for property lost within the limits of any Indian reservation that was knowingly kept there by the owner unless it is clearly proven that the owner of said property had a legal right to have said property on said reservation at the time of said loss, and that he had given no provocation for having such property taken or destroyed. That said Commissioners shall in all cases take into consideration, and, if proper, allow, all just offsets or counter-claims in each case as justice and equity may require. And the United States shall be represented before said Commissioners through the Attorney-General of the United States, whose duty it shall be to see that the interests of the Government are properly presented; and the claimants shall be represented before said Commissioners in person or by attorney.

SEC. 5. That the Chairman of the Board of Indian Depredation Claims is hereby directed to report a list of all claims acted upon by said Commissioners to Congress, within thirty days after the meeting of that body at their first session after the passage of this Act, and to report in like manner to each subsequent Congress thereafter, and oftener if called upon by either House of Congress. Said report shall give the name of each claimant, the amount claimed, the amount allowed by the Commissioners, the residence of the claimant, and the time and place where the loss was

sustained. The original claims, with proofs, shall be kept in the office of said Commissioners, subject to the order of Congress.

SEC. 6. That the amount allowed in each case shall be incorporated in the general Indian appropriation bill unless, in the judgment of Congress, said allowances are unjust to the claimants or the Government; *provided*, that if any of the amounts so found due and allowed by said Commissioners shall be for property taken or destroyed by any tribe of Indians, or individual members thereof, having funds or annuities of any kind due or to become due them from the United States, such amounts shall, if appropriated for in the general Indian appropriation bill, be charged to said Indians, and deducted from such dues or annuities.

SEC. 7. That there is hereby appropriated out of the United States Treasury, out of any money not otherwise appropriated, forty thousand dollars, or so much thereof as is necessary to pay the salaries of the three Commissioners, one clerk, one messenger, and other incidental expenses connected therewith, in accordance with the provisions of this Act, to be audited by the proper accounting officers of the Treasury Department.

SEC. 8. That all claims against the Government of the United States that come under the provisions of this Act, not presented as provided for herein within three years from the approval of this Act, shall be forever barred; and all claims that are presented under the provisions of this Act and disallowed, or any portion of such claims as are disallowed, shall be forever barred as against the Government of the United States; *provided*, that either the claimant or the Government shall have the right to appeal to the Court of Claims from any decision of the Commissioners allowing or disallowing or dismissing any claim, within ninety days from the announcement of any such decision; and said Court shall try said causes upon the proofs received and considered by the Commission, and such other proofs as may be taken in accordance with the rules of said Court, and shall report to Congress upon such claims in the manner provided in section five of this Act, but shall not render judgment in such cases. The party appealing shall be known as the appellant, and the adverse party as the respondent. Such appeal shall be taken by the appellant filing a notice of appeal, specifying the grounds of such appeal, with said Commissioners, at their office in the city of Washington, and by serving a copy of such notice on the respondent or his attorney. The appellant, other than the United States, shall, before such appeal becomes effective, also file with said Commissioners a bond in the sum of five hundred dollars, with proper sureties, to be approved by the Chairman of said Commissioners, conditioned to pay the cost of such appeal in case the decision of the Commissioners is not reversed in whole or in part; and upon the appeal being perfected as aforesaid, the Commissioners shall transmit the entire record and all the proofs and papers in the case to the Court of Claims, and said Court shall thereupon proceed to hear and determine such appeals conformably to its procedure in other cases, except as modified by this Act.

SEC. 9. That all Acts and parts of Acts in conflict or inconsistent with the provisions of this Act are hereby repealed.

Forty-ninth Congress, first session. House of Representatives. Report No. 3117.

#### CLAIMS ARISING OUT OF INDIAN TREATIES.

June 30, 1886—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Hailey, from the Committee on Indian Affairs, submitted the following

REPORT.

[To accompany bill H. R. 9729.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 7849) "to establish a Board of Commissioners to examine, adjust, and report on all claims arising out of Indian treaties and depredations committed by the Indians, and for other purposes," have duly considered the same and report as follows:

For many years large numbers of claims of citizens of the United States for depredations committed by the Indians have come before each session of Congress. Some have been presented by private bills and petitions, while many others have been transmitted to Congress by the Secretary of the Interior, in accordance with existing law. Numerous other claims of Indians for depredations by white men have also been reported upon by the Secretary of the Interior. No positive action has been taken by any Congress, with a view to final disposition of either of these classes of claims. At each session numerous propositions have been made in the form of general bills, to refer these claims to some commission or to the Court of Claims; but, so far as your committee can find, no action has ever been taken by any committee upon any of these propositions. Each Congress has contented itself with paying a few of the claims by special enactment. Your committee have had before them both general and special bills, proposing to deal with claims of this class as well as a comprehensive report of the Secretary of the Interior showing the number of claims filed in this Department (H. R. Ex. Doc. 125, Forty-ninth Congress, first session). After a careful consideration, your committee have reached the conclusion that the only course consistent with a due regard on the one hand for the obligations of the Government, and on the other for the proper security of the Treasury from unfounded demands, is to provide for the examination of these claims by some tribunal endowed with ample facilities for sifting their merits thoroughly, in whose findings Congress may safely repose confidence. Mindful of the importance of the subject-matter, your committee have deemed it proper to present these reasons for submitting the substitute which accompanies this report.

The relations of the Government to the Indians are complex. When the problem to be solved involves not only these relations but also the obligations of the Government towards its citizens and the Indians in their relations to each other, its true solution can only be reached after the most painstaking and careful consideration. A full review of the legislation of Congress upon the subject of the depredations of Indians and whites upon each other is the first necessity in this consideration.

From the earliest days of the Government, its policy in regard to the Indians has been to keep them separated from the whites and to regulate all intercourse between the two races in the strictest manner. The Act of July 22, 1790 (1 Stat. L., 137), is the first law of the United States to regulate trade and intercourse with the Indian tribes. This forbade any trading with the Indians except by those receiving Federal licenses therefor. By Act of March 1, 1793 (1 Stat. L., 329), these provisions were reenacted and other provisions adopted forbidding settlement on or surveying Indian lands, and making void all purchases of land from Indians except by treaty or convention under the authority of the United States.

On May 19, 1796, a third and more comprehensive Act was passed to

cover the whole subject of trade and intercourse with the Indian tribes. This Act (1 Stat. L., 469), carefully defined the Indian country by metes and bounds, reenacted the various restrictive provisions of the former laws, and, in addition, forbade any person going into the Indian country to hunt or graze cattle, under the penalty of fine or imprisonment, or even entering the Indian country south of the Ohio River without a license. Notwithstanding the heavy penalties contained in this Act for offenses against the Indians, and the provisions for punishment, if found outside the Indian country, of any Indian offending against the whites, Congress foresaw that depredations would occur on both sides. Provision was therefore made for such cases. Congress was not unmindful in those days that it had assumed a large but definite obligation by keeping the Indian free in his property from any liability for his offenses against white men, and by guaranteeing him absolute immunity of person if he should return to his reservation before arrest. Neither was Congress inclined to refuse the assumption of this obligation by the United States, even at a time when the impoverished condition of the national finances commanded the most careful scrutiny of every new assumption of financial liability. On the other hand, it was felt that the Indian should know that he should suffer no wrong by the evil actions of bad white men, but that the Great Father would fully care for him. It was felt, too, that in no way could peace be so well kept between the two races as by the assurance that the Government would make full recompense for all wrongs which one race might inflict upon the other. Congress, therefore, governed by the legal obligation in the one case, and by a high sense of honor in dealing with inferior peoples in the other, together with a just appreciation of the wisest policy toward both the citizens and the Indians, enacted that the United States should guarantee an eventual indemnity both to white men and to Indians for the losses sustained by the depredations of the one upon the other. With a view to enforcing the tribal responsibility for depredations, all payments made by the United States for depredations by the Indians were to be reimbursed out of tribal funds, if such funds existed, while, on the other hand, a heavy punishment was affixed to the offenses committed by white men against the Indians.

The just and equitable policy embodied in this law was continued by repeated enactment for many years, provisions substantially identical being contained in two temporary statutes, those of March 3, 1799 (Secs. 4 and 14, 1 Stat. L., 747, 748), and March 30, 1802 (Secs. 4 and 14, 2 Stat. L., 141, 143), and finally embodied in the permanent "intercourse Act" of June 30, 1834 (Secs. 16 and 17, 4 Stat. L., 731). All these sections will be found in full in Appendices A and B, which are attached hereto and made a part of this report.

These ancient rules, controlling the Government in dealing with the relations between the Indians and white settlers, continued in force for nearly sixty years without substantial change. By Act of February 28, 1859, Section 8 (11 Stat. L., 401), Congress repealed the provision guaranteeing eventual indemnity to whites for losses by Indian depredations in cases where no treaty funds existed, although carefully preserving by the same Act the obligation to make indemnification out of annuities, and subsequently providing by joint resolution of June 25, 1860 (12 Stat. L., 120), that any right to indemnity existing at the date of the former Act should not be impaired. The guarantee of indemnity to Indians in cases of depredations by whites was not affected by this Act, nor has there been any legislation since upon this subject. It remains a statutory obligation, Section 16 of the Act of June 30, 1834, being reenacted as Sections 2154 and 2155, Revised Statutes.

During all this period of time payment of claims for Indian depredations was made to a considerable extent by the Indian Bureau. After the Act of 1859, the same course was followed in regard to claims against Indian tribes to whom annuities were due. If the claim was duly proved to the satisfaction of the Indian Bureau, it was paid out of the annuities, unless as occurred in many cases, the annuities were not sufficient to supply the absolute needs of the Indians. In that case the claims remained unpaid *ex necessitate*, though contrary to the law. But after the close of the late war a feeling of distrust arose as to the sufficiency of the means under the control of the Indian Bureau for determining the validity of claims of this class. It began to be feared that an executive bureau was wanting in facilities for the investigation of claims of large amounts, involving unliquidated damages, sufficient to warrant entire confidence that just claims would be paid and unjust claims rejected. For this reason Congress determined to leave for itself the final disposition of all such cases, and enacted, July 16, 1870 (16 Stat. L., 360), that no appropriations to pay annuities should thereafter be used to pay depredation claims, and that no depredation claims should be paid without special appropriation therefor by Congress. This provision of law now appears as Section 2098, Revised Statutes. Two years after this enactment an Act of Congress (May 29, 1872) (Section 7, 17 Stat. L., 190), was passed, doubtless designed to afford a comprehensive remedy to claimants who had suffered losses by Indian depredations. This required the Secretary of the Interior to investigate claims of this class presented to him, and to report the claims to Congress, together with his allowance or disallowance, and all the evidence. This law appears as Sections 445 and 466, Revised Statutes. It was probably expected that the reports of the Interior Department under this Act would be generally accepted, and that the special appropriations for allowed claims would be made almost as a matter of course. But the result has been far different. The reassertion of the ancient liability of the Government is strongly implied in the Act of 1872, but very few payments have been made. In nearly every Congress bills authorizing the payment of a few claims have become laws either because of their exceptional merit or from some other causes. While these few cases are sufficient to show that the liability of the Government has been constantly affirmed, they amount to very little as an actual discharge of its obligations. So great was the wrong caused by the delay in payment that at the second session of the Forty-eighth Congress a large number of claims of this kind which had been approved by the Interior Department were placed upon the Indian appropriation bill, and passed by the House of Representatives. But the Senate, in compliance with its rule forbidding the payment of private claims in general appropriation Acts, struck all these claims out, inserting instead an appropriation of \$10,000 for a further investigation of these claims by the Interior Department. (Act of March 3, 1885, 23 Stat. L., 376; see copy of law in Appendix A.) The chief result of this investigation seems to have been the discovery by the Indian Office that a large majority of the claims heretofore duly considered were barred by the provisions of a repealed law. The last legislative Act upon this subject is an appropriation of \$20,000 by the Indian Appropriation Act of May 15, 1886, for continuing this investigation, the appropriation having been inserted by the Senate after the bill had passed the House.

This review of the legislation on the subject shows that the payment of claims of these classes is in strict accordance with the old and settled policy of the Government begun seven years after the Constitution went into effect and reiterated many times in after years. This policy, too, is no more

than a recognition of the obligations to which the Government is bound upon the highest principles of justice.

In the able and comprehensive speech delivered by Senator J. N. Dolph in the Senate on April 16, 1886 (Congressional Record Forty-ninth Congress, first session, p. 3657), the principles upon which the obligation rests to pay the Indian depredation claims are fully and conclusively stated. This speech is the most complete presentation of this subject ever made to either house of Congress and contains valuable materials to which this report is greatly indebted. (See appendices.)

Senator Dolph says (pp. 3660 and 3661):

Submission to the Government is the primary obligation of the citizen, and protection of the citizen is the correlative obligation of the Government. Theoretically, it is the duty of the Government to afford protection to all its citizens in the enjoyment of life, liberty, and property, not only within its borders, but everywhere they may lawfully go. While its obligation to afford protection is sometimes by law devolved by the State upon municipal corporations intrusted with certain powers of government, the duty is the duty of the State, the power so exercised being derived from the State. The Government of the United States forms no exception to this general rule. Within the powers conferred upon it by the Federal Constitution and for the purposes of its creation it demands the allegiance of the citizen, and to the extent of those powers it owes every citizen protection. As Congress has power "to declare war," "to raise and support armies," "provide and maintain a navy," and the States are prohibited from keeping ships or troops in time of peace, from entering into any agreement or compact with another State or with a foreign power or to engage in war, it becomes the evident duty of the General Government to protect the citizens of the United States in the enjoyment of life, liberty, and property against foreign powers and their citizens and subjects, and the obligation of the Government to do this has never been denied, and in the discharge of this obligation it has declared war, called into use the Army and Navy, taxed the people, and borrowed money upon the public credit.

\* \* \* \* \*

For every wrong there should be a remedy. If one citizen of a State injures another in person or property, the State ought to provide for the redress of that wrong by legal methods; and whenever the State, or municipal corporations within a State, fails to afford such reasonable protection as is within its powers to the citizen, the State or municipal corporation upon the plainest principles of justice should be required to indemnify the citizen for any loss sustained by reason of such failure.

The States are powerless under the Federal Constitution to protect their citizens from the Indian tribes. It is true that in case of actual Indian hostilities they may repel invasion and drive the murderous savages back to their cities of refuge—the reservations—but within them they are safe under the protecting ægis of the Federal authority. The States cannot demand or enforce satisfaction from the Indians for the losses sustained by their citizens. The Federal Government interposes itself between the States and their citizens to shield the Indians from the ordinary and natural consequences of their acts. The citizen cannot justly demand that recourse against the State which is allowed by the laws of many countries and many of the States for losses occasioned by lawlessness and violence, and can only look to the Federal Government for redress.

Hon. Martin Maginnis, for a number of years a Delegate from Montana, has also very forcibly presented the obligation of the Government in this matter (Cong. Rec., vol. 11, Part 1, p. 640):

The Government sets up in the Territories these independent principalities known as reservations. They are occupied by people recognized in a sense as independent nationalities, under the control and protection of the General Government. The laws of the commonwealths in which they are situated do not cover them. The process of the civil Courts cannot invade them. They are cities of refuge, and the Government declares to all surrounding people that they shall not disturb its wards, and assumes the position of guardian and arbiter between them and all others. You say that people who trade or settle in such countries should take the risk of their ventures. So they should under the laws. But if a white man burns your house or steals your horse you can follow him anywhere with the law. You can arrest him, punish, and perhaps recover your property. But when these Indians make a raid off their reservations, invade a settlement, and take your horses and cattle and drive them, under your very eyes, to the reservation, what can you do with the law?

Suppose they murder and destroy and then retreat to their own dominions, and your Marshals and Sheriffs follow them in hot pursuit to the very boundaries of their reservation, what remedy have you? Your law no longer follows the Indians. The process of your Court falls dead as soon as your pursuit reaches the line of his reservation, which

the Government orders you not to cross, and, safe in his city of refuge, the depredator laughs at you and is safe from your law officers, and can exhibit your stolen property before your outraged face, and you have no right to reclaim it, and no remedy for your wrong, except through the General Government.

The Government, in pursuance of its settled policy, says that you shall not cross that line, nor shall your Courts, or their officers, or your local laws. It says these people are the wards of the Government, and if you have any cause of complaint you must come to the Government of the United States, and it will arbitrate your differences and settle the measures of your damages.

Having no other recourse, and being forbidden to resort to any, the settler, therefore, comes to the Government of the United States to right his wrong, and to obtain justice for the acts which have been committed by those whom the Government excludes from the operation of the local law, and for whom, as its own wards, it assumes the responsibility.

In providing for the payment of these claims, Congress will do nothing more than follow the analogies both of ancient and modern laws of other jurisdictions, holding the municipality liable in case of damage by mobs. The Saxon laws provided that the ville should pay forty marks for the killing of any person if the slayer escaped. The statutes of Manchester (13 Ed. I, ch. 1), provided that the hundred should be liable for robberies, if the country would not answer for the bodies of the offenders, and by Act of 7 and 8 Geo. IV, ch. 31, an action was given against the county for damages committed by mobs. The States of the Union have not been backward in following these precedents. New York, Pennsylvania, New Jersey, Maryland, South Carolina, Kentucky, Maine, New Hampshire, Massachusetts, Rhode Island, and Wisconsin, all have similar laws. If these laws be good public policy and sound justice when the criminal and civil Courts are open against offenders, how much more should the United States pay for the depredations unlawfully committed by Indians, who are sacredly protected by the Government of the United States from the process of the Courts of justice?

It has been seen that the statutory obligation requiring payment to the Indians in case of offenses committed against them by white men has never been in the least altered. On the contrary, it has been the subject of repeated treaty confirmations. (See Appendix F.) Your committee deem this obligation and that of paying our citizens for depredations committed by the Indians to be reciprocal. The citizen should not be treated with less consideration than the Indian. The duty to each should be performed, and means provided for payment to each of his rightful dues. Senator Cole of California, well said in 1870 (Cong. Globe, Part 5, p. 4010, Forty-first Congress, second session):

A great deal less care, it seems to me, is given to our own race than to the Indian race. We are providing for their comfort and convenience, and not providing for those against whom they have committed offenses—upon whom they have inflicted damage in some way or other.

'The bill reported by your committee makes a just provision for the wrongs committed on both sides.

The reading of the many Indian treaties made from the foundation of the Government to 1871, when further treaty making with Indians was forbidden by law, shows that many of the Indian tribes have formally agreed that their annuities or other funds shall be liable for payment for depredations committed by members of the tribes. In Appendix D to this report is given a list of treaties making provisions as to this subject. It has already been seen that the United States by law took upon itself the obligation of paying these claims from treaty funds, and has never divested itself of that obligation, although there has been for a number of years a failure to make appropriation for the performance of this obligation. The

law and the treaties in effect make the Government the trustee holding these funds for the benefit of the sufferers by any depredations which these Indians may commit.

The Government has also assumed the obligation of caring for the Indians and supplying all their material necessities. Where the Indians have had treaty funds due them the Government has been relieved of the need of appropriating money from the Treasury to supply their necessities; but in using funds which ought to have been kept for the benefit of the sufferers by depredations in supplying the need of the Indians the trustee has made itself liable for the payment of the claims of the sufferers. There are many Indians to whom annuities were due in 1870 who have now received everything due them, although claims for depredations committed by them have been presented and allowed.

It was the duty of the Government, both by statute and treaty, to pay these claims with the treaty funds, but having neglected this duty and diverted the funds, no matter how useful a purpose, it must now answer to the claimants from the Treasury. In House Ex. Doc. 5, Forty-first Congress, second session, p. 182, it appears that \$4,167,486 30 was estimated as necessary to be appropriated for the fiscal year ending June 30, 1870, to fulfill treaty stipulations with Indian tribes. Nearly all this sum might have been held by the Government by law and treaty for the payment of claims for depredations, but was not. But payments to the Indians have been made to so large an extent that in the book of estimates (H. R. Ex. Doc. 5, 49th Cong., 1st sess., p. 250) for the fiscal year ending June 30, 1887, only \$2,725,444 84 is estimated to be necessary for this purpose, and this includes \$1,400,000, due under the Act of February 28, 1877 (19 Stat. L., 256), to the Sioux Indians. (Same document, p. 137.) This leaves an annual charge of only \$1,325,444 84, now due upon treaty obligations existing in 1870, against \$4,167,486 30 then due, and this lesser sum is subject to annual diminution. Wherever these now exhausted annuities were paid to tribes who had committed depredations the Government violated its trust to the sufferers, and now should answer to them.

Your committee deem it proper to place before the House as full an estimate as possible of the amount of claims which may be allowed under this Act for depredations committed by Indians. The law, as has already been seen, has continuously permitted the presentation of these claims to the Indian Bureau. In a letter to Senator Dolph (see Congressional Record, 49th Cong., 1st sess., p. 3665, and Appendix I to this report, where the letter is reprinted), the Commissioner of Indian Affairs states that the claims on file in this office, dating from 1850 to the present time, aggregate \$13,000,000; that many of these claims, to an indeterminable amount, were paid by the Indian agents prior to the year 1870, and that Congress has appropriated by special Acts \$1,654,530. Subtracting this amount appropriated from the total claimed, leaves \$11,345,470 as a maximum of all the claims presented without allowing for the uncertain amount paid by Indian agents. By reference to the table presented as Appendix H to this report, giving the amounts claimed, allowed, and disallowed, in various claims tribunals, it will be seen that the highest proportion of the amounts allowed to the amounts claimed in any of these seven tribunals is less than twenty-five per cent; that this maximum percentage was in a tribunal (the Court of Claims) which has had a strict statute of limitations, and in which the cognizable claims are those arising upon contract, and generally for liquidated sums; that the next highest proportion, in claims considered by the Quartermaster-General under the Act of July 4, 1864, is but fourteen per



cent, and that the proportions run down as low as one tenth of one per cent (claims against France under the convention of January 15, 1880).

As many of the witnesses are dead by whom the claims embraced in this bill might have been proved at an earlier date, as many of the claimants are dead and their heirs scattered to all parts of the country, and as the claims are for items of property which are easily subject to a higher valuation by the owner than they might have in the view of the Commission, the committee are of the opinion that the proportion of allowances to claims cannot in any event exceed 25 per cent, the maximum percentage shown as having been allowed by any of the tribunals whose allowances are contained in the table presented in Appendix H. This is a liberal estimate and would fix the total of allowances upon claims already filed in the Interior Department at about \$2,800,000.

It is not possible to estimate with certainty the number of new claims which would be filed before the Commission in addition to those now in the Interior Department. The committee think it safe to say that, at the outside, no more than one half as many claims will be presented as have already been filed, especially when it is known that all the claims will be subjected to the rigid scrutiny of a commission which will be able to take testimony on the spot where the claim originated. Doubtless, too, the proportion of allowances will be less in cases to be filed than in claims presented shortly after the losses occurred. But if this liberal addition be made and the same proportion of allowances used as a basis of estimate, it will be seen that the total expenditure under this Act for Indian depredation claims is not likely to exceed \$4,200,000. While it is difficult to make an approximation of this character, it will be noticed that the bases of calculation involved in this estimate are all liberal. The payments will be extended over a term of years, and will, therefore, not fall with any great weight on the Government in any particular year.

The bill reported by the committee provides for the appointment of a special Board of three Commissioners, who shall hold their regular sessions in Washington, and special sessions in the Indian Territory, or in any other places where they may best obtain information and evidence to aid them in arriving at correct decisions. To further their obtaining evidence, each member of the Board is authorized to act separately for that purpose only. All decisions upon claims are to be made by the Board in its regular sessions. All claims for depredations by Indians upon whites or by whites upon Indians, with all the papers and information relating thereto on file in the Departments, are to be delivered to the Board on its organization. The Board is also authorized to consider all offsets or counter-claims, and allow them as against the claimants.

Your committee have thought it best that the functions of the Commissioners should be, as far as possible, strictly judicial. They have therefore reported in the bill a provision making it the duty of the Attorney-General to see that the interests of the Government are properly presented. In some commissions and tribunals heretofore created, possessing judicial functions, the Commissioners have been obliged to act both as judges and as counsel for the United States. These two positions your committee deem to be especially incompatible. Either the Commissioner is so closely occupied by his judicial duties that the interests of the Government are not properly cared for, or in his zeal for the protection of the United States he forgets his judicial capacity. A grievous injustice results in either case. The only remedy for this is a strict separation of the two functions.

Your committee are strongly opposed to any secret modes of examination of claims of so much importance as those embraced in this bill, and believe that the Commission should take all its proceedings in the full view of both parties, as represented by their counsel, and subject to that same scrutiny which experience has proved to be so valuable in the ordinary proceedings of Courts. Every man is entitled to a day in Court, and to have his cause fairly heard. Your committee have thought it proper to provide for such hearing before this Commission, believing that in this way only can there be satisfaction with its decisions.

The amounts thus allowed by the Commissioners are to be incorporated in the Indian appropriation bill. But your committee have thought it proper to express in this bill a reservation, excepting from appropriation any allowances which, in the judgment of Congress, are unjust to the claimants or the Government.

Your committee have also provided in the sixth section of the bill that if any of the amounts allowed shall be for depredations committed by tribes of Indians, or by individual members of tribes having funds due or to become due them from the Government, the amounts appropriated shall be deducted from such dues or annuities. In another part of this report it has been shown that many tribes have provided by treaty for such deductions. It has been suggested that the tribe ought not to suffer for the wrong doings of its individual members; but your committee think that the correct way to enforce good conduct among the Indians is by such a provision, thus placing the responsibility for individual conduct upon the tribe, who possess the control over the individuals, and requiring the tribe to answer out of their annuities for individual misconduct. This was the view taken by Senator Thayer of Nebraska, in debate (Cong. Globe, 41st Cong., 2d session, part 5, p. 4012).

I say to them also that the way to produce an effect upon the Indians is by letting them know that if they commit these depredations their annuities shall be taken to pay for them. This is the only way in which you will reach them. That is the only way in which you will have an effect on the Indians and compel them to cease their depredations on the settlers.

The treaties themselves make no difference in their provisions for payment out of annuity funds between cases of individual depredations and those of tribal depredations, and the Act of 1834 is explicit in its reference to the acts of individual Indians. The general theory of the Government in dealing with the Indians up to the present time has been to deal with them in their tribal relations, and to remit individual relations between Indians to the tribal customs and regulations.

The number of Indians in the United States in 1884, exclusive of Alaska, was 264,369. (See report of Commissioner of Indian Affairs for 1884, page xviii.) The total area of Indian reservations, October 10, 1883, was 135,998,101 acres. (See The Public Domain, page 1253.) This is an average of about 511 acres to each Indian. It is evident to the most casual observer that this small number of Indians cannot continue indefinitely to occupy all this large amount of land. Numerous bills are before Congress at every session proposing to divide reservations and purchase them from the Indians. It is not doubted that it will become necessary for Congress at some future day to provide for the purchase of various portions of the Indian lands; thereby large sums of money will become due to different tribes. Your committee believe that the tribal funds so obtained should, equally with the annuities now due, be chargeable with the amounts paid in satisfaction of the claims for depredations committed by the tribes.



They therefore report a provision requiring that the payments on account of the depredation claims shall be charged to and deducted from funds "to become due," as well as those already due. It is believed that the Indians themselves will thus ultimately pay the greater proportion of the claims for their depredations.

Your committee have also reported a provision that all claims not presented within three years from the approval of this Act, and all claims, presented and disallowed, and all disallowed portions of claims, shall be forever barred. The object of the committee in this provision is to make the proceedings of the Commission a final settlement of these claims, so that they shall never thereafter be urged upon Congress. But it is realized that no bar of this kind can be final unless every claim has received such thorough and careful consideration as will commend itself to the sense of justice of the American people. To effect this end fully your committee have provided that an appeal to the Court of Claims be allowed in every claim from the decision of the Commission, whether it is for the Government or the claimant. This Court, after an existence of over thirty years, has established itself in the public confidence. So carefully are its decisions considered that at the term of the Supreme Court of the United States for 1885-86, no decision of the Court of Claims was reversed, although eighteen appeals from this Court were decided. It is believed that when the action of a temporary Commission is taken under the watchful eye of a Court and its decisions are subject to the scrutiny of a reviewing power, it will exercise its authority with greater care than if subject to no control. The experience of Congress in some past instances shows that even after a decision by a *quasi* judicial tribunal claimants are apt to appear before Congress with rejected claims and pray a reversal of the action of this tribunal. It is a well known fact that the Committee on War Claims is overburdened year after year with appeals, mounting in number into the thousands, from claimants who allege that they have been injured by the adverse action of the Southern Claims Commission and the Quartermaster-General. That committee has already found it necessary to refer many of these claims, already decided by one or the other of these tribunals, to the Court of Claims for reconsideration, in accordance with the provisions of the Act of March 3, 1883, commonly called the "Bowman Act." It is believed that such an undesirable result as this can best be avoided by permitting every claimant who deems the action of the Commission unjust to appeal to the Court of Claims at once. The Court of Claims is actually an appeal Court from the decisions of the various departments. Claimants whose demands are rejected by the tribunals of first instance, usually the Executive Departments, have in general a right of appeal to the Court of Claims. There seems to be no reason why the claimants provided for in this bill should be precluded from further remedy by the adverse decision of the Court of first instance. They are therefore afforded a right to review by a superior tribunal. The Government is put in an equally advantageous position. The findings of the Commission in favor of claimants may be again examined and the United States will appropriate to pay only claims which have passed the scrutiny of the Court of Claims, or in which the law officers of the Government may acquiesce in the decisions of the Commission. The Court of Claims is not authorized to render judgment in such cases, but makes a report to Congress in the same manner as is made by the Commission.

Your committee believe that the passage of the bill reported by them will afford valuable and much needed relief in many ways. The Secretary of the Interior and the Commissioner of Indian Affairs, and to some extent

the Secretary of War, already crowded with necessary and proper duties, have been burdened with work for which an Executive Department is not fitted—the investigation of old and disputed demands against the Government. The same claims, after investigation in the executive branch of the Government, have been repeatedly, and with justice, pressed upon Congress. Members of Congress, upon whose time the public business makes the most urgent demands, have been compelled to give attention to these cases, and the committees year after year have had their dockets burdened with them. Each Congress has seen a few cases disposed of, but many more added to take their places. This bill relieves both the executive and legislative branches of the Government by creating a new tribunal with powers which enable it to properly exercise judicial functions. But not alone to the Government does this bill offer relief. Your committee believes that it affords a just and proper means of settlement for well founded and long urged demands both of the citizens of the United States and the wards of the Government. The meeting of the two races upon the frontier has necessarily been fruitful in conflict. There have been wrongs on both sides. To the Indian, the ward of the Government, justice and generosity must go hand in hand in awarding recompense for wrongs. The settler rightfully demands an equal justice. The early pioneers in the far West, the makers of a new civilization, the founders of a great empire, the leaders in the great army of workers who have made the vast western wilderness blossom with rich harvests, are among the noblest heroes and greatest benefactors of this Republic, and deserve from a grateful country an ample recognition of their trials and privations. It is difficult for one who has not taken part in that stupendous work to realize the labors of these early pioneers. Crossing the plains by slow and toilsome journeys, day after day gradually pressing nearer to their long sought destinations, reaching them after trials sufficient to dismay less stout hearts, they begin to carve out homes for themselves, their wives and their children, in the wilderness. The clearing is made, the house built, the field fenced and plowed, the seed planted, and the harvest reaped. Then when the settler has passed his weariest day of toil and the future begins to look full of promise, a sudden warning is swiftly borne from the next settlement that the hostile Indians are coming. The warning comes too late. Before the settler can escape the savages, mounted on the murdered white man's horses, fed with Government rations, armed with guns with which a kind guardian has provided them—these wards of the nation sack his house and carry away or burn all the fruits of his toil. The settler is fortunate if he escapes with his life or if he does not see his wife and daughters killed before his eyes or suffer a fate far worse than death. When the Indians are gone all that is left is a heap of ruins. His home is a home no longer; it is little more than the wilderness. If he dares again occupy his old homestead he must begin life anew. Such is the veritable history of many a settler. Year after year has every Representative from the West been appealed to by these veterans to secure a recognition by the Government of their just demands, until now these old heroes of a struggle as noble in its victories but as sad in its defeats as any war, ask with despair: "Shall we never be paid for our losses?"

Your committee are not unmindful of the weighty responsibility of the Government to the Indians, or that they, too, have suffered wrongs. But the settler himself must receive a long delayed measure of justice. It is believed that the bill reported by your committee as a substitute for House Bill 7849 affords a practical mode of redress. It is therefore reported favorably to the House, with the recommendation that it do pass.

## APPENDIX A.

## GENERAL LEGISLATION ON CLAIMS FOR DEPREDACTIONS COMMITTED BY INDIANS.

## I.—Act of May 19, 1796, Sec. 14 (1 Stat. L., 472).

*And be it further enacted*, That if any Indian or Indians, belonging to any tribe in amity with the United States, shall come over or across the said boundary line into any State or Territory inhabited by citizens of the United States, and there take, steal, or destroy any horse, horses, or other property, belonging to any citizen or inhabitant of the United States, or of either of the territorial districts of the United States, or shall commit any murder, violence, or outrage, upon any such citizen or inhabitant, it shall be the duty of such citizen or inhabitant, his representative, attorney, or agent, to make application to the superintendent, or such other person as the President of the United States shall authorize for that purpose; who, upon being furnished with the necessary documents and proofs, shall, under the direction or instruction of the President of the United States, make application to the nation or tribe, to which such Indian or Indians shall belong, for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction, in a reasonable time, not exceeding eighteen months, then it shall be the duty of such superintendent, or other person authorized, as aforesaid, to make return of his doings to the case, that such further steps may be taken as shall be proper to obtain satisfaction for the injury. And, in the meantime, in respect to the property so taken, stolen, or destroyed, the United States guarantee to the party injured an eventual indemnification; *provided always*, that if such injured party, his representative, attorney, or agent, shall in any way violate any of the provisions of this Act, by seeking or attempting to obtain private satisfaction or revenge, by crossing over the line, on any of the Indian lands, he shall forfeit all claim upon the United States for such indemnification; *and provided, also*, that nothing herein contained shall prevent the legal apprehension or arresting, within the limits of any State or district, of any Indian having so offended; *and provided further*, that it shall be lawful for the President of the United States to deduct such sum or sums as shall be paid for the property taken, stolen, or destroyed, by any such Indian, out of the annual stipend which the United States are bound to pay to the tribe to which such Indian shall belong.

## II.—Act of March 3, 1799, Sec. 14 (1 Stat. L., 747).

*And be it further enacted*, That if any Indian or Indians, belonging to any tribe in amity with the United States, shall come over or cross the said boundary line, into any State or Territory inhabited by citizens of the United States, and there take, steal, or destroy any horse, or horses, or other property, belonging to any citizen or inhabitant of the United States, or of either of the territorial districts of the United States, or shall commit any murder, violence, or outrage upon any such citizen or inhabitant, it shall be the duty of such citizen or inhabitant, his representative, attorney, or agent, to make application to the superintendent, or such other person as the President of the United States shall authorize for that purpose; who, upon being furnished with the necessary documents and proof, shall, under the direction or instruction of the President of the United States, make application to the nation or tribe to which such Indian or Indians shall belong for satisfaction, and if such nation or tribe shall neglect or refuse to make satisfaction, in a reasonable time, not exceeding eighteen months, then it shall be the duty of such superintendent, or other person authorized as aforesaid, to make return of his doings to the President of the United States, and forward to him all the documents and proofs in the case, that such further steps may be taken as shall be proper to obtain satisfaction for the injury; and, in the meantime, in respect to the property so taken, stolen, or destroyed, the United States guarantee to the party injured, an eventual indemnification; *provided always*, that if such injured party, his representative, attorney, or agent, shall, in any way, violate any of the provisions of this Act by seeking, or attempting to obtain private satisfaction or revenge, by crossing over the line, on any of the Indian lands, he shall forfeit all claim upon the United States for such indemnification; *and provided, also*, that nothing herein contained shall prevent the legal apprehension or arresting, within the limits of any State or district, of any Indian having so offended; *and provided further*, that it shall be lawful for the President of the United States to deduct such sum or sums as shall be paid for the property taken, stolen, or destroyed by any such Indian, out of the annual stipend which the United States are bound to pay to the tribe to which such Indian shall belong.

## III.—Act of March 30, 1802, Sec. 14 (2 Stat. L., 143).

*And be it further enacted*, That if any Indian or Indians, belonging to any tribe in amity with the United States, shall come over or cross the said boundary line, into any State or Territory inhabited by citizens of the United States, and there take, steal, or destroy any horse, horses, or other property, belonging to any citizen or inhabitant of the United States, or of either of the Territorial districts of the United States, or shall commit any murder, violence, or outrage, upon any such citizen or inhabitant, it shall be the duty of such citizen or inhabitant, his representative, attorney, or agent, to make application to the superintendent, or such other person as the President of the United States shall authorize for that purpose, who, upon being furnished with the necessary documents and proofs, shall, under the direction or instruction of the President of the United States, make application

to the nation or tribe to which such Indian or Indians shall belong, for satisfaction, and if such nation or tribe shall neglect or refuse to make satisfaction in a reasonable time, not exceeding twelve months, then it shall be the duty of such superintendent, or other person authorized as aforesaid, to make return of his doings to the President of the United States, and forward to him all the documents and proofs in the case, that such further steps may be taken as shall be proper to obtain satisfaction for the injury. And, in the meantime, in respect to the property so taken, stolen, or destroyed, the United States guarantee to the party injured an eventual indemnification; *provided always*, that if such injured party, his representative, attorney, or agent, shall in any way violate any of the provisions of this Act, by seeking or attempting to obtain private satisfaction or revenge, by crossing over the line, on any of the Indian lands, he shall forfeit all claim upon the United States for such indemnification; *and provided, also*, that nothing herein contained shall prevent the legal apprehension or arresting, within the limits of any State or district, of any Indian having so offended; *and further provided*, that it shall be lawful for the President of the United States to deduct such sum or sums as shall be paid for the property taken, stolen, or destroyed by such Indian, out of the annual stipend which the United States are bound to pay to the tribe to which such Indian shall belong.

## IV.—Act of June 30, 1834, Sec. 17 (4 Stat. L., 731).

*And be it further enacted*, That if any Indian or Indians belonging to any tribe in amity with the United States shall, within the Indian country, take or destroy the property of any person lawfully within such country, or shall pass from the Indian country into any State or Territory inhabited by citizens of the United States, and there take, steal, or destroy any horse, horses, or other property, belonging to any citizen or inhabitant of the United States, such citizen or inhabitant, his representative, attorney, or agent, may make application to the proper superintendent, agent, or sub-agent, who, upon being furnished with the necessary documents and proofs, shall, under the direction of the President, make application to the nation or tribe to which said Indian or Indians shall belong, for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction in a reasonable time, not exceeding twelve months, it shall be the duty of such superintendent, agent, or sub-agent, to make return of his doings to the Commissioner of Indian Affairs, that such further steps may be taken as shall be proper, in the opinion of the President, to obtain satisfaction for the injury; and, in the meantime, in respect to the property so taken, stolen, or destroyed, the United States guarantee to the party so injured an eventual indemnification; *provided*, that if such injured party, his representative, attorney, or agent, shall in any way violate any of the provisions of this Act, by seeking or attempting to obtain private satisfaction or revenge, he shall forfeit all claim upon the United States for such indemnification; *and provided, also*, that unless such claim shall be presented within three years after the commission of the injury, the same shall be barred. And if the nation or tribe to which such Indian may belong receive any annuity from the United States, such claim shall, at the next payment of the annuity, be deducted therefrom and paid to the party injured; and if no annuity is payable to such nation or tribe, then the amount of the claim shall be paid from the Treasury of the United States; *provided*, that nothing herein contained shall prevent the legal apprehension and punishment of any Indians having so offended.

## V.—Act of February 28, 1859, Sec. 8 (11 Stat. L., 401).

*And be it further enacted*, That so much of the Act entitled "An Act to regulate trade and intercourse with the Indian tribes, and preserve peace on the frontiers," approved June thirteenth, eighteen hundred and thirty-four, as provides that the United States shall make indemnification out of the Treasury for property taken or destroyed in certain cases, by the Indians trespassing on white men as described in the said Act, be and the same is hereby repealed; *provided, however*, that nothing herein contained shall be so construed as to impair or destroy the obligations of the Indians to make indemnification out of the annuities as prescribed in said Act.

## VI.—Joint Resolution of June 25, 1860 (12 Stat. L., 120).

That the repeal of [by] the eighth section of the Act of Congress, approved the twenty-eighth day of February, eighteen hundred and fifty-nine, of so much of the Act of Congress entitled "An Act to regulate trade and intercourse with Indian tribes, and to preserve peace on the frontiers," approved June thirteenth, eighteen hundred and thirty-four, as provides that the United States shall make indemnification out of the Treasury for property taken or destroyed in certain cases by Indians trespassing on white men, as described in said Act, shall not be construed to destroy or impair any right to indemnity which existed at the date of said repeal.

## VII.—Act of July 15, 1870, Sec. 4 (16 Stat. L. 360). Sec. 2098, Revised Statutes.

*And be it further enacted*, That no part of the moneys appropriated by this Act, or which may hereafter be appropriated in any general Act or deficiency bill making appropriations for the current and contingent expenses of the Indian department, to pay annuities due

to or to be used and expended for the care and benefit of any tribe or tribes of Indians named herein, shall be applied to the payment of any claim for depredations that may have been or may be committed by such tribe or tribes, or any member or members thereof; and no claim for Indian depredations shall hereafter be paid until Congress shall make special appropriation therefor; and all Acts and parts of Acts inconsistent herewith are hereby repealed.

VIII.—Act of May 29, 1872, Sec. 7 (17 Stat. L., 190). Secs. 445 and 466, Revised Statutes.

That it shall be the duty of the Secretary of the Interior to prepare and cause to be published such rules and regulations as he may deem necessary or proper, prescribing the manner of presenting claims arising under existing laws or treaty stipulations, for compensation for depredations committed by the Indians, and the degree and character of the evidence necessary to support such claims; he shall carefully investigate all such claims as may be presented, subject to the rules and regulations prepared by him, and report to Congress, at each session thereof, the nature, character, and amount of such claims, whether allowed by him or not, and the evidence upon which his action was based; *provided*, that no payment on account of said claims shall be made without a specific appropriation therefor by Congress.

IX.—Section 2156, Revised Statutes.

If any Indian belonging to any tribe in amity with the United States shall, within the Indian country, take or destroy the property of any person lawfully within such country, or shall pass from Indian country into any State or Territory inhabited by citizens of the United States, and there take, steal, or destroy any horse or other property belonging to any citizen or inhabitant of the United States, such citizen or inhabitant, his representative, attorney, or agent, may make application to the proper superintendent, agent, or sub-agent, who, upon being furnished with the necessary documents and proofs, shall, under the direction of the President, make application to the nation or tribe to which such Indian shall belong for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction in a reasonable time, not exceeding twelve months, such superintendent, agent, or sub-agent shall make return of his doings to the Commissioner of Indian Affairs, that such further steps may be taken as shall be proper, in the opinion of the President, to obtain satisfaction for the injury.

X.—Act of March 3, 1885 (23 Stat. L., 376).

INDIAN DEPREDAATION CLAIMS.

For the investigation of certain Indian depredation claims, ten thousand dollars; and in expending said sum the Secretary of the Interior shall cause a complete list of all claims heretofore filed in the Interior Department, and which have been approved in whole or in part, and now remain unpaid, and also all such claims as are pending but not yet examined, on behalf of citizens of the United States, on account of depredations committed, chargeable against any tribe of Indians by reason of any treaty between such tribe and the United States, including the name and address of the claimants, the date of the alleged depredations, by what tribe committed, the date of examination and approval, with a reference to the date and clause of the treaty creating the obligation for payment, to be made and presented to Congress at its next regular session; and the Secretary is authorized and empowered, before making such report, to cause such additional investigation to be made and such further testimony to be taken as he may deem necessary to enable him to determine the kind and value of all property damaged and destroyed by reason of the depredations aforesaid, and by what tribe such depredations were committed; and his report shall include his determination upon each claim, together with the names and residences of witnesses and the testimony of each, and also what funds are now existing or to be derived by reason of treaty or other obligation out of which the same should be paid.

XI.—Act of May 15, 1886 (not yet published).

Indian depredation claims: For continuing the investigation and examination of certain Indian depredation claims, originally authorized, and in the manner therein provided for, by the Indian appropriation Act, approved March third, eighteen hundred and eighty-five, twenty thousand dollars; and the examination and report shall include claims if any, barred by statute, such fact to be stated in the report; and all claims whose examination shall be completed by January first, eighteen hundred and eighty-seven, shall then be reported to Congress, with the opinions and conclusions of the Commissioner of Indian Affairs and the Secretary of the Interior upon all material facts, and all the evidence and papers pertaining thereto.

APPENDIX B.

GENERAL LEGISLATION ON CLAIMS FOR DEPREDAATIONS COMMITTED BY WHITES ON THE PROPERTY OF INDIANS.

I.—Act of May 19, 1796, Sec. 4 (1 Stat. L., 470).

*And be it further enacted*, That if any such citizen, or other person, shall go into any town, settlement, or territory belonging, or secured by treaty with the United States, to

any nation or tribe of Indians, and shall there commit robbery, larceny, trespass, or other crime against the person or property of any friendly Indian or Indians which would be punishable, if committed within the jurisdiction of any State against a citizen of the United States, or unauthorized by law, and with a hostile intention, shall be found on any Indian land, such offender shall forfeit a sum not exceeding one hundred dollars, and be imprisoned not exceeding twelve months; and shall also, when property is taken or destroyed, forfeit and pay to such Indian or Indians to whom the property taken and destroyed belongs a sum equal to twice the just value of the property so taken or destroyed; and if such offender shall be unable to pay a sum at least equal to the said just value, whatever such payment shall fall short of the said just value shall be paid out of the Treasury of the United States; *provided, nevertheless*, that no such Indian shall be entitled to any payment out of the Treasury of the United States for any such property taken or destroyed if he, or any of the nation to which he belongs, shall have sought private revenge or attempted to obtain satisfaction by any force or violence.

II.—Act of March 3, 1799, Sec. 4 (1 Stat. L., 744).

*And be it further enacted*, That if any such citizen or person shall go into any town, settlement, or territory belonging or secured by treaty with the United States to any nation or tribe of Indians, and shall there commit robbery, larceny, trespass, or other crime against the person or property of any friendly Indian or Indians, which would be punishable if committed within the jurisdiction of any State against a citizen of the United States, or unauthorized by law, and with a hostile intention, shall be found on any Indian land, such offender shall forfeit a sum not exceeding one hundred dollars and be imprisoned not exceeding twelve months; and shall also, when property is taken or destroyed, forfeit and pay to such Indian or Indians to whom the property taken and destroyed belongs a sum equal to twice the just value of the property so taken or destroyed; and if such offender shall be unable to pay a sum equal at least to the said just value, whatever such payment shall fall short of the said just value shall be paid out of the Treasury of the United States; *provided, nevertheless*, that no such Indian shall be entitled to any payment out of the Treasury of the United States for any such property taken or destroyed if he, or any of the nation to which he belongs, shall have sought private revenge or attempted to obtain satisfaction by any force or violence.

III.—Act of March 30, 1802, Sec. 4 (2 Stat. L., 141).

*And be it further enacted*, That if any such citizen, or other person, shall go into any town, settlement, or territory belonging or secured by treaty with the United States to any nation or tribe of Indians, and shall there commit robbery, larceny, trespass, or other crime against the person or property of any friendly Indian or Indians which would be punishable if committed within the jurisdiction of any State against a citizen of the United States, or unauthorized by law, and with a hostile intention, shall be found on any Indian land, such offender shall forfeit a sum not exceeding one hundred dollars and be imprisoned not exceeding twelve months; and shall also, when property is taken or destroyed, forfeit and pay to such Indian or Indians to whom the property taken and destroyed belongs a sum equal to twice the just value of the property so taken or destroyed; and if such offender shall be unable to pay a sum at least equal to the said just value, whatever such payment shall fall short of the said just value shall be paid out of the Treasury of the United States; *provided, nevertheless*, that no such Indian shall be entitled to any payment out of the Treasury of the United States for such property taken or destroyed if he, or any of the nation to which he belongs, shall have sought private revenge or attempted to obtain satisfaction by any force or violence.

IV.—Act of June 30, 1834, Sec. 16 (4 Stat. L., 731).

*And be it further enacted*, That where, in the commission by a white person of any crime, offense, or misdemeanor within the Indian country, the property of any friendly Indian is taken, injured, or destroyed, and a conviction is had for such crime, offense, or misdemeanor, the person so convicted shall be sentenced to pay to such friendly Indian to whom the property may belong, or whose person may be injured, a sum equal to twice the just value of the property so taken, injured, or destroyed; and if such offender shall be unable to pay a sum at least equal to the just value or amount, whatever such payment shall fall short of the same shall be paid out of the Treasury of the United States; *provided*, that no such Indian shall be entitled to any payment out of the Treasury of the United States for any such property if he, or any of the nation to which he belongs, shall have sought private revenge or attempted to obtain satisfaction by any force or violence; *and provided, also*, that if such offender cannot be apprehended and brought to trial, the amount of such property shall be paid out of the Treasury, as aforesaid.

V.—Sections 2154 and 2155, Revised Statutes.

Whenever, in the commission by a white person of any crime, offense, or misdemeanor within the Indian country, the property of any friendly Indian is taken, injured, or destroyed, and a conviction is had for such crime, offense, or misdemeanor, the person so convicted shall be sentenced to pay to such friendly Indian to whom the property may belong, or whose person may be injured, a sum equal to twice the just value of the property so taken, injured, or destroyed.

If such offender shall be unable to pay a sum at least equal to the just value or amount, whatever such payment shall fall short of the same shall be paid out of the Treasury of the United States. If such offender cannot be apprehended and brought to trial, the amount of such property shall be paid out of the Treasury; but no Indian shall be entitled to any payment out of the Treasury of the United States for any such property if he, or any of the nation to which he belongs, have sought private revenge, or have attempted to obtain satisfaction by any force or violence.

## APPENDIX C.

## SPECIAL LEGISLATION.—APPROPRIATIONS FOR INDIAN DEPREDAATION CLAIMS.

The following is a list of special appropriations for payment of Indian depredation claims. In each case it is stated whether payment is to be made from the Treasury or from the Indian annuities. The total of amounts appropriated from the Treasury is \$1,604,028 25; the total appropriated from Indian annuities is \$201,316 37. But these totals do not embrace the sums appropriated from the Treasury by several Acts (March 2, 1827; May 31, 1830; June 30, 1834), in which the amounts are not specified.

By Act of March 3, 1819 (Section 5, 3 Statutes, 517), \$4,000 is appropriated from the Treasury to satisfy claims of citizens of the United States for property stolen or destroyed by the Osages.

By Act of March 2, 1827 (6 Statutes, 361), William Morrison, late contractor for supplies to the Army, is allowed credit (out of the Treasury) for sixty-nine beef cattle taken from near the military post of Prairie Du Chien, in July, 1816, by certain predatory tribes of Indians.

By Act of March 25, 1830 (6 Statutes, 408), the Secretary of War is directed to pay \$6,703 from the Treasury to four persons for property taken by the Osage Indians from 1816 to 1823.

By Act of May 31, 1830 (4 Statutes, 428), certain depredation claims are referred to the Third Auditor to be decided according to the provisions of Section 14 of the Act of March 30, 1802, the money to be paid out of the Treasury.

By Act of March 2, 1831 (4 Statutes, 470), \$1,300 is appropriated from the Treasury for payment of sundry claims for Indian depredations.

By Act of June 28, 1834 (4 Statutes, 705), \$7,800 is appropriated from the Treasury to defray the expense of investigating claims against the Seminoles for property stolen or destroyed by them and for liquidating such as may be satisfactorily established.

By Act of June 30, 1834 (4 Statutes, 721), payment not exceeding \$250,000 is granted out of the Treasury to citizens of Georgia for claims founded upon the capture and detention or destruction of property by Creek Indians prior to the Act of March 30, 1802.

By Act of June 30, 1834 (6 Statutes, 581), certain claims for Indian depredations are referred to the Secretary of War, who is directed to pay out of the Treasury all which shall be established.

By Act of July 1, 1836 (6 Statutes, 659), \$403 is appropriated from the Treasury to James Alexander, and \$575 to Ira Nash, for losses sustained and depredations committed by Sac and Fox Indians in 1814.

By Act of July 2, 1836 (6 Statutes, 671), the Secretary of War is directed to pay to Joseph Bogy \$6,000 from the Indian annuities for his merchandise and property taken or destroyed by the Choctaw Indians in 1807.

By Act of March 3, 1837 (5 Statutes, 158-162), the President is directed to report to Congress as to depredations committed by the Seminoles and Creeks, before and after the recent Indian war.

By Act of March 3, 1841 (6 Statutes, 822), the Secretary of the Treasury is directed to pay out of the Treasury, to Avery, Saltmarsh & Co., mail contractors, \$9,779 for property employed by them in transporting the mail, captured and destroyed by the Creek Indians in May, 1836.

By Act of June 15, 1844 (6 Statutes, 913), the Secretary of War is directed to pay to George Wallis \$3,000 out of the Indian annuities, for the destruction of cattle belonging to the said Wallis, by the Sac and Fox and Iowa Indians.

By Act of August 9, 1846 (9 Statutes, 24 Private), \$1,500 is appropriated from the Indian annuities to pay to the legal representatives of Cyrus Turner for depredations committed by Sioux Indians.

By Act of March 2, 1847 (9 Statutes, 41 Private), \$1,081 is appropriated from the Treasury to pay Elijah White and others for property taken by the Pawnee Indians.

By Act of March 3, 1847 (9 Statutes, 41 Private), \$676 91 is appropriated from the Treasury to pay Joseph E. Primeau and Thomas J. Chapman for depredations committed by Yankton Indians.

By Act of August 14, 1848 (9 Statutes, 90 Private), \$800 is appropriated from the Treasury to pay Charles N. Gibson for a wagon captured and destroyed by the Seminole Indians in Middle Florida in February, 1839.

By Act of March 3, 1849 (9 Statutes, 141 Private), \$4,155 is appropriated from the Treasury to pay Thomas Talbot and others for property taken by the Pawnee Indians.

By Act of August 30, 1852 (10 Statutes, 41, 55), \$1,200 is appropriated from the Treasury to pay James M. Marsh for losses for property taken by the Sioux Indians while extending the line of surveys under contract.

By Act of January 18, 1855 (10 Statutes, 843), \$500 is appropriated from the Treasury to pay Moses D. Hogan for cattle taken by the Indians.

By Act of August 18, 1856 (11 Statutes, 65, 81), the Secretary of the Interior is ordered to investigate claims for depredations by Indians in New Mexico.

By Act of March 16, 1858 (11 Statutes, 527, the sum of \$200, with interest from the first day of June, 1852, was appropriated from the Treasury to pay John Hamilton, of Champaign County, Ohio, for his time and services during his imprisonment with the Indians in the war of 1812 with Great Britain.

By Act of June 19, 1860 (12 Statutes, 44, 58), \$16,679 74 is appropriated from the Treasury to pay for the loss and destruction of property of citizens of Minnesota and Iowa at Spirit Lake in 1857, by Sioux Indians.

By Act of March 2, 1861 (12 Statutes, 203), \$9,640 74 is appropriated from the Treasury to indemnify citizens of Iowa and Minnesota for destruction of property at or near Spirit Lake by Inkpadutah's band of Sioux Indians.

By Act of February 16, 1863 (12 Statutes, 652, 658), provision is made for payment out of their forfeited annuities for damages done by Sioux Indians in Minnesota on the occasion of the Sioux massacre in 1862.

By Act of May 28, 1864 (13 Statutes, 92), \$928,411 is appropriated from the Treasury to pay the awards of the commission under the act of February 16, 1863, for damages done by the Sioux Indians in 1862, and a further sum of \$241,963 is appropriated for additional claims.

By Act of June 29, 1866 (14 Statutes, 609), \$28,175 is appropriated from the Treasury for Elizabeth Woodward and George Chorpenning for destruction of property by Indians in 1862, and by the second section of the same Act \$26,370 is appropriated from the Indian annuities to pay George Chorpenning for property destroyed by Indians prior to April 1, 1856.

By Act of March 2, 1868 (15 Statutes, 356), \$400 is appropriated from the Treasury to the widow of Maj. Gen. I. B. Richardson for one mule and four horses stolen from him by Apache Indians while on military duty in New Mexico.

By Act of April 10, 1869 (16 Statutes, 13, 39), \$10,906 34 is appropriated from the Treasury to pay for depredations committed by Indians in Northwestern Iowa, in 1857.

By Act of February 27, 1871 (16 Statutes, 704), \$2,564 10 is appropriated out of any money appropriated for the benefit of the Cheyenne and Arapaho Indians, to Lucy A. Smith, for losses by depredations of said Indians in Nebraska.

By Act of May 7, 1872 (17 Statutes, 395), commissioners are appointed to examine into depredations committed by Indians and Mexicans in Texas.

By Act of May 21, 1872 (17 Statutes, 661), \$14,650 is appropriated from the Treasury to indemnify Charles F. Tracy for depredations committed by Apaches in May, 1870.

By Act of June 5, 1872 (17 Statutes, 675), \$10,000 is appropriated from the Treasury to pay Mrs. Fanny Kelly for property taken and destroyed by Sioux Indians in 1864.

By Act of June 10, 1872 (17 Statutes, 690), \$30,000 is appropriated from the Treasury to pay the heirs of Alexander Watson for property lost, captured, or destroyed in Florida during the Indian hostilities commencing in 1835.

By Act of June 10, 1872 (17 Statutes, 701), \$13,200 is appropriated from the Treasury to Elbridge Gerry for valuable services rendered the Government in 1864, and for all claims for Indian depredations up to the date of the passage of this Act.

By Act of March 3, 1873 (17 Statutes, 766), \$2,250 is appropriated from the Treasury to Mrs. Ann Marble, administratrix, for losses by depredations by Cheyenne Indians.

By Act of April 28, 1874 (18 Statutes, 543), \$1,095 37 is appropriated from the Treasury to pay Mrs. Siloma Deck for losses by depredations by Sioux Indians in 1852.

By Act of March 3, 1875 (18 Statutes, 424), \$2,500 each is appropriated to Adelaide German and Julia German, two white children captured in Kansas, the same to be withheld from annuities due the Cheyennes.

By Act of March 3, 1877 (19 Statutes, 549), \$2,283 92 is appropriated from the Treasury to pay Hans C. Peterson for damages by Sioux Indians in Minnesota in 1862.

By Act of March 3, 1879 (20 Statutes, 396), \$2,915 with interest at 7 per cent is appropriated from any treaty funds of the Kiowa Indians, to the heirs of Abel S. Lee for property taken and destroyed by the Kiowa Indians in 1872.

By Act of March 3, 1879 (20 Statutes, 390), \$5,000 is appropriated out of any money hereafter appropriated for the use and benefit of the Cheyenne Indians, to Mrs. Celia C. Short.

By Act of June 8, 1880 (21 Statutes, 549), \$15,867 50 is appropriated to pay Henry Warren for damages sustained by depredations of Indians in 1871, while Warren was a Government contractor, the same to be withheld from the annuities due the Indians.

By Act of June 16, 1880 (21 Statutes, 588), \$2,000 is appropriated from the annuities due the Cheyenne or Arapaho Indians to Amanda M. Cook, whose mother was killed and herself captured by the Indians in 1865.

By Act of March 3, 1881 (21 Statutes, 640), \$58,659 46 is appropriated from the Treasury to pay Dodd, Brown & Co., assignees of E. M. Durfee & Co., and others, for depredations committed by various tribes of Indians, the amounts to be deducted from the annuities.

By Act of March 3, 1881 (21 Statutes, 640), \$3,600 is appropriated from money belonging to the Osage Indians to pay William Redus for depredations committed by these Indians.

By Act of May 17, 1882 (22 Statutes, 86), \$9,870 10 is appropriated from unexpended balances of treaty funds to pay various claimants for damages caused by raids of Northern Cheyennes.

By Act of March 3, 1883 (22 Statutes, 804), \$12,200 is appropriated from moneys due the Cheyenne and Arapaho Indians to Powers & Newman, and D. and B. Powers for depredations committed by these Indians.

By Act of March 20, 1884 (23 Statutes, 525), \$5,400 is appropriated from the Treasury to pay Louisa Boddy for depredations committed by the Modoc Indians.

By Act of March 3, 1885 (23 Statutes, 498), \$46,770 21 is appropriated to pay W. C. Oburn out of annuities for depredations committed by the Cheyenne and Arapaho Indians.

## APPENDIX D.

INDIAN TREATIES MAKING PROVISIONS AS TO PAYMENT OUT OF ANNUITIES FOR DEPREDA-  
TIONS COMMITTED ON THE PROPERTY OF WHITE MEN.

[The references by pages are to the "Revision of Indian Treaties," 1873.]

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Omahas.....	June 21, 1854.....	10	567, 568
Osages (see note <i>c</i> below).....	January 7, 1819.....	1, 2	575, 576
Osages (see note <i>d</i> below).....	December 30, 1825.....	9	580
Osages (see note <i>e</i> below).....	March 2, 1839.....	6	584
Oregon, Middle.....	April 19, 1859.....	7	627
Otoes and Missourias.....	June 21, 1854.....	9	640
Pawnees.....	May 26, 1858.....	5	653
Poncas.....	April 11, 1859.....	7	664
Quapaws.....	July 15, 1818.....	6	717, 718
Quinaielts, etc.....	April 11, 1859.....	8	725, 726
Sacs and Foxes.....	February 12, 1823.....	5	738, 739
S'Klallams.....	April 29, 1859.....	9	803
Snakes.....	July 10, 1866.....	4	805
Sioux, Yanktons.....	February 26, 1859.....	11	861
Sioux, Mendawakanton, Wahpakosta.....	March 31, 1859.....	6	88, 89
Sioux, Sisseton, Wahpeton.....	March 31, 1859.....	6	907
Sioux, Brulé, Ogallalla.....	February 24, 1869.....	1	914, 915
Shoshones, Eastern and Bannocks.....	February 24, 1869.....	1	932
Utahs.....	December 14, 1864.....	6	972
Umpquas and Calapooias.....	March 30, 1855.....	8	980, 981
Utes.....	November 6, 1868.....	6	983, 984
Walla Wallas and Cayuses.....	April 11, 1859.....	8	992
Yakamas.....	April 18, 1859.....	8	1,045

*a* The United States agrees to appropriate \$100,000 to pay for depredations and forcible exactions.

*b* The United States agrees to pay for all depredations since 1815.

*c* Depredations committed since 1814 are to be paid by the United States, in consideration of the cession of Indian lands.

*d* The United States agrees to pay for all depredations since 1808.

*e* The United States agrees to pay all depredation claims.

## APPENDIX E.

LIST OF TREATIES BY WHICH THE INDIANS AGREE TO USE THEIR BEST EFFORTS TO RETURN  
STOLEN PROPERTY OR TO PUNISH OFFENDERS.

[The references by pages are to the "Revision of Indian Treaties," 1873.]

TRIBES.	Date.	Article.	Page.
Belantse-Etoas, etc.....	February 6, 1826.....	6	14, 15
Chippewas.....	January 29, 1855.....	6	225, 226
Chippewas.....	April 7, 1855.....	9	270
Comanches, Ionies, Anadacas, Caddoes, etc.....	March 8, 1847.....	8	307
Crows.....	February 6, 1826.....	5	326, 327
Delawares.....	February 14, 1805.....	3	336
Iowas.....	July 17, 1854.....	11	406
Kaskaskias, Peorias.....	August 10, 1854.....	10	429
Klamath, etc.....	February 17, 1870.....	9	436
Kickapoos.....	July 17, 1854.....	9	447
Makahs.....	February 6, 1826.....	5	460
Miamies.....	August 4, 1854.....	9	519
Mandans.....	February 6, 1826.....	6	466
Osages.....	December 26, 1815.....	9	573, 574
Osages.....	January 21, 1867.....	10	588
Otoes and Missourias.....	February 6, 1826.....	5	632
Pawnees.....	February 6, 1826.....	5	643
Poncas.....	February 6, 1826.....	5	667, 668
Ricaras.....	February 26, 1826.....	6	723, 729
Rogue Rivers.....	April 12, 1854.....	6	731, 732
Sacs and Foxes.....	July 17, 1854.....	10	761, 762
Shawnees.....	November 2, 1854.....	14	800
Sioux, Yanktons, Tetons, Yanktonais.....	February 6, 1826.....	5	868
Sioux, Ogallallas.....	February 6, 1826.....	5	872, 873
Sioux, Onchapapas.....	February 6, 1826.....	5	874, 875
Umpquas.....	February 5, 1855.....	6	976
Winnebagoes.....	May 23, 1855.....	10	1,010



## APPENDIX F.

## LIST OF TREATIES BY WHICH IT IS PROVIDED THAT THE INDIANS SHALL BE PAID BY THE GOVERNMENT FOR DEPREDACTIONS COMMITTED ON THEIR PROPERTY BY WHITE MEN.

[The references by pages are to the "Revision of Indian Treaties," 1873.]

TRIBES.	Date.	Article.	Page.
Blackfeet.....	April 25, 1856.....	7	9
Belantse-Etoas.....	February 6, 1826.....	6	14, 15
Cherokees.....	October 2, 1798.....	9	35
Creeks.....	August 28, 1856.....	18	112
Cheyennes and Arapahoes.....	August 19, 1868.....	1	130
Number Cheyennes and number Arapahoes.....	August 25, 1868.....	1	136
Choctaws and Chickasaws.....	March 4, 1856.....	14	280
Comanches and Wichitas.....	May 19, 1836.....	3	304
Comanches, Kiowas, Apaches.....	February 12, 1854.....	4, 108	310, 311
Comanches, Kiowas.....	August 25, 1868.....	1	319
Crows.....	February 6, 1826.....	5	326, 327
Crows.....	July 25, 1868.....	1	328
Kansas.....	December 30, 1825.....	10	413
Kiowas, Katakas, etc.....	February 21, 1838.....	3, 5, 7	456, 457
Makahs.....	February 6, 1826.....	5	460
Mandans.....	February 6, 1826.....	6	466
Navajoes.....	August 12, 1818.....	1	528
Osages.....	December 26, 1815.....	9	573, 574
Otoes and Missourias.....	February 6, 1826.....	5	643
Pawnees.....	February 6, 1826.....	5	643
Poncas.....	February 6, 1826.....	5	667, 668
Quapaws.....	July 15, 1818.....	6	717, 718
Ricaras.....	February 26, 1825.....	6	728, 729
Rogue Rivers.....	April 12, 1854.....	6	731, 732
Sacs and Foxes.....	February 12, 1823.....	5	738, 739
Shawnees.....	November 2, 1854.....	11	799
Sioux, Yanktons, Tetons, Yanktonais.....	February 6, 1826.....	5	868
Sioux, Ogallallas.....	February 6, 1826.....	5	872, 873
Sioux, Oncepapas.....	February 6, 1826.....	5	574, 575
Sioux, Ogallallas, Brulés.....	February 24, 1869.....	1	914, 915
Shoshones, Eastern, and Bannocks.....	February 24, 1869.....	1	932
Utahs.....	December 14, 1864.....	6	972
Umpquas.....	February 5, 1855.....	6	976
Utes.....	November 6, 1868.....	6	983, 984

## APPENDIX G.

## EXPRESSIONS OF OPINION IN DEBATE, SENATE AND HOUSE OF REPRESENTATIVES.

## Senate.

[Congressional Globe, Forty-first Congress, second session, part 5.]

## Mr. Thayer (page 4012) :

The honorable Senator from Iowa and the honorable Senator from Oregon say that in some cases the annuities of Indian tribes have been absorbed in meeting these claims. I tell those two Senators that the property, the all of settlers on the frontier has been destroyed by Indians; and I say to them also that the way to produce an effect upon the Indians is by letting them know that if they commit these depredations their annuities shall be taken to pay for them. That is the only way in which you will reach them. That is the only way in which you will have an effect on the Indians and compel them to cease their depredations on the settlers. The last remedy for a man whose property, whose crops, whose horses, and whose cattle have been taken from him by Indians is to tell him to come to Congress and wait until the day of doom before he can get satisfaction or compensation. I trust that this whole section will be stricken out.

## Mr. Tipton (page 4012) :

Every Senator here who knows anything about the new States knows that when a band of savages pass through our borders, or when the Indians who are on the reservations pass through our States, there is nothing that protects the property of the settler

so well as a consciousness on the part of the chiefs and the head men of the Indians that if the stock of the settler is killed, if his crops are destroyed, their annuities may be reached and they will feel it in their pockets. Nothing so completely gives protection to the settler as that. Then, when their young men spread upon the prairies and roam about at will, when they come upon the cabin of a settler and his property is entirely in their power, they will have been warned by those in authority over them not to touch it or the value of the property will be taken out of their annuities. I tell you that gives us more protection when they pass through our inhabited counties and portions of our States than anything else that you can devise. But let it be understood that if they commit depredations, those who complain of them, if they can make a case, may come to Congress and get their pay out of the Treasury of the United States, and who cares what depredations are then committed? I say that unless this section be stricken out, or so amended that the redress shall be direct upon the tribe or upon the annuities of the tribe, we shall have very little protection.

## Mr. Williams (page 4219) :

It is a mistaken policy, in my judgment, that undertakes to throw around these Indian tribes the protection of law in robbery, a thing which they will understand just as well as white men. It will not be long before the Indians will know that they can with impunity make inroads upon the white settlers and steal their horses and cattle, and carry them away and make use of them, and that there is no remedy for the white persons so injured.

House of Representatives.

[Congressional Globe, Forty-first Congress, second session, part 6.]

## Mr. Degener (page 5009) :

I am not a lawyer, but common sense teaches me that if any person chooses to keep a dangerous animal on his premises, say a rattlesnake in his room, if he chooses to feed it chooses to provide a warm blanket for that rattlesnake, so that it may not suffer from cold, and if he does not choose to extract the poisonous fangs of that animal, then he becomes responsible should that rattlesnake escape from his room and go upon the premises of his neighbor and there bite his neighbor, or his neighbor's wife, or children, or his cattle. I believe common sense teaches us that that is the correct principle.

## Mr. Wilkinson (page 5010) :

The principle is essentially just, and there is no reason for changing the existing law except the clamor which has arisen on account of the reputation that the Indian Department has had before the country. If the Indian Department stood as well before the country as the Treasury Department there is not a man in this House who would think of making the change proposed by this amendment.

## Mr. Paine (page 5011) :

On the other hand, it is desirable, if possible, to so regulate the payment of our annuities to the Indians that we may avoid the difficulties, the animosities, and the troubles that will be sure to grow out of the collection of false and fictitious and sham claims against the Indians. If there were an absolute certainty that only just claims would be presented against these Indians, if we were sure that only the claims of honest frontiersmen whose property had actually been destroyed or stolen would be presented and paid out of the moneys which would otherwise be devoted to the payment of these annuities, then I would have no hesitation in allowing the law to stand as it now is. But there is the danger that, by permitting the law to stand as it now is, we shall give encouragement to the prosecution of unjust claims. I believe everybody understands that it has been true that large numbers of outrageous claims have been presented against the Indians; demands made by men who set themselves deliberately to work to trump up claims upon no substantial foundation, for the purpose of robbing these Indians. On the whole, for the purpose of avoiding that difficulty, I am willing to encounter another.

Senate.

[Congressional Record, Forty-eighth Congress, second session, vol. 16, part 2.]

## Mr. Plumb (page 1717) :

\* \* \* \* \*  
While I say that, I am as earnest as any one can be in favor of the Government adopting a rule which shall result in the payment of what I regard as justly an obligation



against the Government as any other one which it is called upon to respond to. There are millions of dollars, I believe, certainly many hundreds of thousands of dollars, which the Government of the United States owes to claimants all over the country. I have no doubt the case of which the Senator from California speaks is one, to a certain extent at all events; possibly there may be some doubt about the amount; but in all those cases there ought to be a tribunal provided for the ascertainment of the amount due. I introduced a bill years ago, and have reintroduced it, to have an auditing of these claims in order that they might come before Congress not as objects of suspicion, but upon their true footing as genuine existing liabilities against the Government, and having had all the scrutiny that they ought to have preceding their allowance. The Committee on Appropriations, for the purpose of bringing about this result, seized upon an amendment offered to the bill in the House and so reframed it as they believe will result in establishing the validity or invalidity of these claims in such a way that they will not be subject to objection any longer.

Mr. Dawes (page 1718):

Instead of committing the United States to the payment of particular claims by paying fifteen per cent upon them and letting all this vast amount remain back waiting for that provision to go through, the Committee on Appropriations have proposed on page 47 of the bill, this amendment which I beg leave to read:

"For the investigation of certain Indian depredation claims, \$10,000; and in expending said sum the Secretary of the Interior shall cause a complete list of all claims heretofore filed in the Interior Department and which have been approved in whole or in part and now remain unpaid, and also all such claims as are pending but not yet examined, on behalf of citizens of the United States on account of depredations committed, chargeable against any tribe of Indians by reason of any treaty between such tribe and the United States, including the name and address of the claimants, the date of the alleged depredations, by what tribe committed, the date of examination and approval, with a reference to the date and clause of the treaty creating the obligation for payment, to be made and presented to Congress at its next regular session; and the Secretary is authorized and empowered, before making such report, to cause such additional investigation to be made and such further testimony to be taken as he may deem necessary to enable him to determine the kind and value of all property damaged or destroyed by reason of the depredations aforesaid, and by what tribes such depredations were committed; and his report shall include his determination upon each claim, together with the names and residences of witnesses and the testimony of each, and also what funds are now existing or to be derived by reason of treaty or other obligation out of which the same should be paid."

The Secretary of the Interior is required to pass upon these claims. He has passed upon them in the past in the manner which I have suggested. He has not had the money to send anybody into the Territories where it has been alleged that these depredations have been made. He has the power under the statute, but he has not had the money; he has had no men that he could pay for that purpose. Therefore, whenever a man sent his claim up here or referred it to the agent of the tribe, when the agent of the tribe got the affidavits furnished by the claimant and sent them up here without any hearing or cross-examination whatever, the Secretary of the Interior has written "approved;" and the claims come to Congress, thirty-one hundred of them in a single letter, amounting to more than a million and a half dollars, and a dozen of them were put upon a single page in this bill by the other branch with a stipulation that only fifteen per cent should be paid. Fifteen per cent of them would take twice as much as the very Indians upon whom they are charged have got in the Treasury; and we are called upon in this bill independent of that, to appropriate some \$25,000 to support and feed these very Indians.

I submit that the safest way is the one proposed by the Committee on Appropriations, and that any other way is unsafe, unfair to other claimants, invidious, unjust, and groundless discrimination in favor of these claims.

Mr. Coke (page 1719):

I think, Mr. President, that a proper measure of justice to the claimants who have suffered from Indian depredations would suggest to the committee and to the Senate that the claims which have been investigated under Acts of Congress prescribing the mode and manner of their investigation, which are on file in the Interior Department, and have been reported to Congress by the Secretary of the Interior, approved by him as just and honest claims, should be embraced in this bill, and appropriations made to pay them. The committee propose by their amendment that they shall be reinvestigated. Why reinvestigate claims which have already been fully investigated? We must presume that they have been fully investigated, because the Secretary of the Interior, the Commissioner of Indian Affairs, the agents and superintendents over the Indians, all had authority to make the investigations, to summon witnesses and take depositions, and

upon their investigation, presumably correctly made, the Secretary of the Interior has reported a large number of these claims, belonging chiefly in Kansas, Colorado, and Texas, as just and approved by him.

The committee now propose to reinvestigate those claims after a lapse of from fifteen to twenty years, when all the testimony has gone, possibly when the facts upon which the claims are founded are necessarily obscured from loss of testimony and death of witnesses. There is no justice in such a course.

The people of the frontier States knew that they had no recourse against the Indians, except what Congress gave them, and Congress in the Acts to which I have referred prescribed certain methods which they have pursued. They submitted themselves fully to the jurisdiction prescribed: and now, after their claims have been approved by the tribunal appointed by Congress, their witnesses dead or scattered, they are to be called upon to again come forward and resubstantiate the same claims already adjudicated and on file in the Department and reported approved to Congress.

(Page 1720):

I know something about these claims for Indian depredations. I know that the frontier of Texas was at one time driven back seventy-five miles by hostile Indians from the Fort Sill Reservation, where they were under the care and control and management and protection of the Government of the United States. The people of Texas dared not go upon that reservation to retaliate. They could have gone there and wiped out the Indians, but the United States Government protected them. Whenever a full moon shone at night they came down upon Texas, drove off cattle and horses, burned houses and killed and scalped men, and carried women and children into captivity.

I know that this was the case for five years, and Mr. Francis A. Walker, who was Commissioner of Indian Affairs, in his book upon the Indian problem, speaking of the improvement of the Indians, of their methods, and of their beginning to acquire property, said of the Comanches and Kiowas, that they have some 16,000 head of horses and mules, stolen chiefly from Texas. That is a statement in the History of the Indian Problem, by Mr. Francis A. Walker.

I have no doubt that the same experience was realized by all the other frontier States. I have personal knowledge of the fact that until the State of Texas organized a battalion of State troops and sent them to the frontier and protected the settlers against the Indians, the frontier was almost abandoned. I know hundreds and hundreds of men in Texas who had thousands of head of cattle and hundreds of head of horses, who lost every dollar's worth of property they had by the depredations of those Indians. Yet the Senator from Massachusetts would cast an imputation upon the justice of these claims, examined and approved as they have been.

Not one claim in twenty has been filed that could have been filed in the Interior Department from Texas. It is too late to file them now; the parties cannot comply with the law; they are excluded. Those which are filed represent a very small proportion of the claims which ought to have been filed by people who lost nearly everything they had by the depredations of Indians. The requirements of the law were so onerous and the people were so hopeless of recovering any of their losses that but few of them ever attempted it. The principal difficulty was to identify the Indians or the tribe to which they belonged, without which the law promised no relief, and which could rarely be done.

Mr. President, I believe that these claims which have been reported to the Interior Department, and which have been investigated and have been approved by the tribunal appointed by the Government of the United States are just claims and ought to be paid. I believe the committee should take every one of these claims and put them on this appropriation bill. The Government of the United States is as justly and honestly bound to see those claims paid as it is to see any bond it has ever issued paid. The Indians are the wards of the Government. There has been no time when the people could not have protected themselves had they been permitted to do it, and failing to restrain them the Government made itself responsible for the depredations of the Indians. This responsibility has many times been recognized by the Government, as I propose on another occasion to show.

As the Senate Committee on Appropriations determined that they would not appropriate the money now to pay these claims, that they would not put these claims thus approved and reported upon this bill, then I believe the next best thing for them to do was, as the committee has done, require a full report of all these claims to be made to Congress at the next session, and when this report comes in and we see what they all amount to I shall favor, and I believe that the honor of the Government will require, that Congress shall take steps to liquidate them at once. I do not see why those who have honest claims for Indian depredations should be sneered at. They are the pioneers of the country. They have gone westward until we have no frontier left, blazing the way for settlement and civilization.

Mr. Manderson (page 1720):

Mr. President, I certainly quite agree with the suggestions made by the Senator from Texas in regard to the duty of the Government to pay those who have suffered loss on

the frontier of the country by reason of Indian depredations, and I wish to supplement his suggestion as to the claims mentioned in this bill, in that part of the bill which has already been stricken out by the action of the committee, by reading from a report of the Committee on Claims. It was stated by the Senator from Tennessee [Mr. Jackson] that the claims presented in this bill had been reported adversely by the committee. That statement is truthful; but it does not tell all the truth. The inference might follow that these claims were rejected because of lack of merit, for fraud, or because the parties had not suffered the losses they pretended to have suffered; but that is not the finding of the committee. The Committee on Claims, following the action of the Interior Department, reports as to these claims, and I read from the report:

"The claimants are all citizens of Texas, generally engaged in agriculture or stock raising, quietly and peaceably pursuing their avocations, having nothing to do with trade or traffic with the Indians, and in no way connected with any disturbance between whites and Indians, there or elsewhere. They were all citizens of the State of Texas, and while engaged in peaceful pursuits were set upon by bands of Indians (who were supposed to be under the restraint and control of the Government on their reservations), their stock stampeded and driven off, and other property destroyed or carried away, and in many cases their herders killed or wounded. They have, as the evidence shows, at all times refrained from any violation of law by taking the remedy in their own hands, and giving blow for blow, but have, in compliance with the laws which Congress has from time to time passed for their protection and indemnity, made out their claims, supported them by ample proof, both as to quantity and value, and have presented them to the officers designated by the Government to examine into their justness and the truthfulness of their statements; and those officers, after having sent the claims to the agents of the different tribes to be presented to the Indians for their statements in regard to them, and after hearing the reports of those agents, and making a careful examination of the proofs offered by the claimants, have allowed them the various sums for payment of which the claimants now ask an appropriation by Congress."

So that these claims have not been allowed by the Department of the Interior upon mere *ex parte* affidavits, but upon full investigation and with a chance to the Indian themselves, through their agents, to be heard.

They are taken up in this report, and although the committee recognizes their merit and the obligation upon the Government to pay this class of claims, it does report adversely to them, as suggested by the Senator from Tennessee, in this language:

As stated in your committee's report upon the claim of Overton and Love, there are a large number of these claims, equally meritorious, on file in the office of the Commissioner of Indian Affairs. No good reason can be given for paying the claims under consideration without paying them all. This committee cannot recommend the passage of such claims until Congress adopts some general policy of dealing with all these claims.

I admit that the suggestion of the committee is a wise one. All of these claims should be dealt with, but year after year rolls by and they are not paid. In my own State I know of existing claims, as valid and meritorious as those that are stated in the report, that are nearly a quarter of a century old, for depredations committed by Indians upon frontiersmen who were invited by the Government to go upon Government land, and these men, driven from their lands, their homes destroyed, and in frequent instances members of their families killed or treated worse by Indian depredators, remain with their serious losses yet unpaid.

I submit, Mr. President, that it is a crying shame that these claims have not been paid.

Mr. Maxey (page 1721):

Mr. President, the general plan for efficient and prompt settlement of outstanding claims proposed by the Committee on Appropriations I think is wise; but I submit to that committee and to the Senate whether there is any reason why, because they propose to adopt that plan, the claims which have been allowed by the House and which come to us as approved claims shall be stricken out of the bill. In other words, the law has always favored the vigilant. If gentlemen who have claims have gone to the labor and expense of gathering up their testimony, of laying it before the Secretary of the Interior, of having their claims examined and approved and recommended to Congress, and Congress in its wisdom allows these claims, and the bill comes to us with those claims thus allowed, I ask if there is any reason or propriety in striking out all the claims allowed, as found on pages 8, 9, 10, etc., of the bill which comes to us from the House, simply because a provision is made by the Appropriations Committee for a general settlement of all such claims? If the claims which are allowed are just in themselves, and the Senator in charge of this bill does not gainsay that proposition; if they are right, why should they be struck out in order to take their place under the general plan of settlement when they have already been examined and approved and allowed by the proper committee of the House as just and proper claims? I can, therefore, see no reason why these claims shall be stricken out, nor do I see any conflict between the claims which are allowed by the House standing as a part of this bill, and the proviso which is put in by the Appropriations Committee of the Senate in respect to those claims which are not as yet allowed, or have not been sent up by the Secretary of the Interior.

"Mr. President, it is to the interest of the Republic that there be an end of litigation, and if these men have had any claims litigated and passed upon and they have been allowed

by the House, why should they be stricken out of the bill by the Senate? It is not pretended that they are not just claims. If there was a shadow of suspicion cast on the claims there would be some reason in that, but there is none. They are admitted to be just, they are admitted to be right, but they are simply stricken out because they may conflict with the plan proposed for future settlements. These claims have been already settled, why should they be relegated to the future to be settled then? I cannot see any reason for that. It does not seem to me to be a fair proposition.

Mr. Miller of California (page 1722):

What I object to is this practice of the Government of the United States, which is unbecoming a great government, interposing technical objections to shilly-shally around and put off payment in the manner of a bankrupt debtor, or a man who is not disposed to pay his debts. That is the position in which the Committee on Appropriations to-day are putting the Government of the United States in relation to the citizens who hold these claims. That there is an obligation to pay these claims out of the funds held in trust by the Government belonging to the Indians there can be no doubt; but the Committee on Appropriations, or the Chairman of the Committee on Indian Affairs, who has charge of this bill, seems to desire to put off the payment continually. It is so year after year. This process has been going on for a great many years, and when we are confronted by the condition of things, then we invent some new scheme, some new plan by which these claims shall be put off; we have not got the report we want, or there is something lacking, and a man who has vigilantly prosecuted his claim and has had it adjudicated, and the amount found due shall not be paid because somebody who has not used the time diligently, and whose claim has not been adjudicated, is not paid, and that furnishes a reason why the man who has a just claim which has been adjudicated shall not be paid. That seems to me a strange position to take. I cannot see why when a claim is adjudicated and found to be due this great Government should desire to put off the day of payment, and to bring up technical and other objections to avoid the payment.

I will go further and say that I am in favor of paying all just and adjudicated claims of this class out of the Treasury. I believe it is incumbent on the Government to do it. The law was once that the Government was required to pay such claims. It was afterward amended so that the payment should be made out of funds belonging to the Indians. To refuse to pay these claims, to allow the Indians to commit depredations without their being required to pay, or the Government being required to pay the resulting damages to property, is only to encourage Indian depredations and to continue the practice. If a white citizen of the United States commits a depredation on the Indians he must pay double the amount of the damage sustained by the Indians. I want to see Indian depredations stopped, and I do not know any better way than to require payment. The Government is bound to furnish protection to its citizens. I do not want the citizen to be paid more than he has actually suffered. I want the claim to be just; I want it investigated thoroughly and completely, and adjudicated in every phase of it before payment is made. I contend in these cases, or in some of them that I have personal knowledge of at any rate, there has been such an investigation and such an adjudication, and there remains no doubt about the bona fides or justice of the claims.

Mr. Maxey (page 1723):

We have said that these Indian disturbances were not wars, that Indians were not to be regarded as belligerents. They are wards of the nation. The Government of the United States has assumed to take care of them and to protect the frontier against them by placing them on reservations and under the control of the military; and they have thus invited people to go on the frontier, risk their lives, and risk their property.

The Government has invited them to do that, and has placed agents over the Indians; but for all that they break out and they carry with them the torch; they burn, pillage, rob, destroy, murder, and carry into captivity; and when these unfortunate people come to Congress and ask for relief, because every man has not been prepared to bring forward his claim in the mode and manner which is required, all others who have done so are to be relegated to some commission hereafter to be appointed to regulate these things. Sir, that is not just. Let "every tub stand upon its own bottom." If a man has an honest claim let it be brought forward, and if the claims amount to \$8,000,000, as the Senator from Wisconsin says, if they are just claims for depredations committed by these wards of the nation upon the defenseless frontier people in the destruction and robbery of their property, this Government, as an upright and honorable and honest gentleman would do, ought to pay the last dollar of it if the Indians have not enough money of their own to pay that debt. I assume in the broadest form the position that it would be just and right and fair to do it.

Mr. Cockrell (page 1724):

It is a matter of absolute necessity that we shall sift these claims, that we shall ascertain those that are properly chargeable against the nations and tribes that have annuities,

and with whom we have treaty stipulations, and whose money we have, so that we can pay the claims. Now, I am for making these Indians pay every solitary dollar due for the actual depredations committed by them, whenever they have any money or whenever they have any lands out of which they can be paid. I want to hold them responsible to the fullest extent of the law; but I only want to pay what is actually due, the real value of the property destroyed, or the real injury done to it, and not mere imaginative damages that may have resulted, and which should never be allowed in any Court of justice. Therefore, we put in the amendment, under the head of "Indian Depredation Claims," at page 47, requiring a thorough investigation of this whole matter. We appropriate \$10,000 for it. The Secretary can take this money and he can have a thorough investigation made; he can report to us all the facts; he can show us the evidence upon which these claims are allowed, and the treaties and the funds. Then we can go to work and settle the cases intelligently, and honestly, and fairly; but we cannot do it until we have that information, and it is idle to undertake to do it. We are simply making fish of one and flesh of another. We are making a favorite of one, and we are doing great injustice and wrong to hundreds of others.

## APPENDIX H.

CLAIMS PRESENTED, ALLOWED, AND DISALLOWED IN VARIOUS CLAIMS TRIBUNALS, SHOWING THE PROPORTIONS OF CLAIMS TO ALLOWANCES.

## I.

Southern Claims Commission, under Act of March 3, 1871 (16 Stat. L., 524):

Amount claimed .....	\$60,258,150 44
Amount allowed .....	4,636,920 69
Amount rejected .....	55,621,229 75

(See House Miscellaneous Document No. 30, Forty-sixth Congress, second session.)

## II.

Court of Claims in cases decided from December term, 1867, to December term, 1880:

Amount claimed .....	\$80,315,529 20
Amount allowed .....	19,770,540 98
Amount rejected .....	60,544,988 22

(See seventeenth volume Court of Claims Reports, page 11.)

## III.

Claims Commission under convention with Great Britain of February, 1853 (10 Stat. L., 988):

Amount claimed, "millions." .....	
Amount allowed, about .....	\$600,000 00

(See message of the President communicating the proceedings, printed by the Senate Printer, 1858, page 4.)

## IV.

Claims Commission under convention with Mexico of July 4, 1868 (15 Stat. L., 679):

Amount of claims against the United States .....	\$86,661,981 15
Amount allowed in claims against the United States .....	150,498 41
Amount rejected in claims against the United States .....	86,511,392 74
Amount of claims against Mexico .....	470,126,613 40
Amount allowed in claims against Mexico .....	4,125,622 20
Amount rejected in claims against Mexico .....	466,000,991 20

(See Senate Executive Document No. 31, Forty-fourth Congress, second session.)

## V.

Claims Commission under convention with France of January 15, 1880 (21 Stat. L., 673):

Amount of claims against the United States .....	\$17,368,151 27
Amount allowed in claims against the United States .....	625,566 35
Amount rejected in claims against the United States .....	16,742,584 92
Amount of claims against France .....	2,427,544 91
Amount allowed in claims against France, 13,659 francs 14 cent., or about .....	2,732 00
Amount rejected in claims against France .....	2,424,812 91

(See House Executive Document No. 235, Forty-eighth Congress, second session, pages 191, 193.)

## VI.

Claims under the Act of July 4, 1864, filed in the office of the Quartermaster-General:

Amount claimed .....	\$41,107,266 48
Amount reported to the Third Auditor under the second section of said Act with recommendation for settlement up to March 6, 1886 .....	5,750,119 71
Amount rejected .....	29,083,554 16
Amount of claims pending at said date .....	6,273,592 61

## VII.

Claims filed in the office of the Commissary-General up to March 10, 1886:

Amount claimed .....	\$4,944,111 14
Amount recommended to the Third Auditor of the Treasury for settlement under said Act to said date .....	429,533 47
Amount rejected .....	4,509,704 17
Amount of claims now pending .....	4,873 50

## APPENDIX I.

LETTER OF COMMISSIONER OF INDIAN AFFAIRS, SHOWING THE AMOUNT OF CLAIMS FOR DEPREDACTIONS COMMITTED BY THE INDIANS, FILED IN THE OFFICE OF INDIAN AFFAIRS.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,  
WASHINGTON, D. C., March 3, 1886. }

SIR: In reply to your interrogatories relative to number, amount, etc., of Indian depredation claims pending in this office, I have the honor to inform you that with the forces employed and the amount of other duties devolving upon them, it has been impossible to collect the full and exact data you desire; such facts, however, as the office has been able to collect, and which are believed to be approximately correct, are given.

There are about forty-five hundred claims on file on account of Indian depredations, dating from 1850 to the present time, and they aggregate in amount \$13,000,000. Prior to the Act of July 15, 1870 (see Revised Statutes, Section 2093), claims against Indians for depredations were paid by United States Indian agents. As to what amount was thus paid the office has not been able to ascertain. By an examination of the Statutes at Large, beginning with the Act of March 3, 1819 (3 Statutes, page 517), and coming down to the Act of March 3, 1885 (23 Statutes, 498), it will be seen that Congress has appropriated by special Acts in payment of claims about the sum of \$1,654,530.

As to what amount of claims has been allowed by and what amount has been rejected by the Commissioner of Indian Affairs or the Secretary of the Interior heretofore cannot be ascertained within the time desired by you, in fact it could be ascertained at all in a satisfactory manner, as in many instances the same claim has been disallowed by one Secretary of the Interior and allowed by his successor.

Very respectfully,

J. D. C. ATKINS, Commissioner.

Hon. J. N. Dolph, United States Senate.

## INDIAN DEPREDACTION CLAIMS.

SPEECH OF HON. J. N. DOLPH.

The President *pro tempore*. The bill called up by the Senator from Oregon is now before the Senate.

Mr. Dolph. As I desire to refer to Senate Bill 1820, I ask to have it read as part of my remarks.

The President *pro tempore*. The bill will be read.

The Chief Clerk read as follows:

*Be it enacted, etc.*, That there be and hereby is appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$5,000,000, or so much thereof as may be necessary, to pay the Indian depredation claims which have been heretofore filed and investigated under the direction of the Secretary of the Interior and reported by him to Congress, in pursuance of the laws of Congress and in accordance with the rules and regulations prescribed by the Secretary of the Interior.

Mr. Dolph. I now ask to have read the bill which I introduced this morning concerning Indian depredations.

The President *pro tempore*. The bill will be read.  
The Chief Clerk read the bill (S. 2169) in relation to Indian depredations, as follows:

*Be it enacted, etc.,* That the Court of Claims shall have power to hear and determine all claims for depredations committed by Indians embraced within the terms of Section 2156 of the Revised Statutes, whether the said claims have been heretofore presented to the Interior Department or Congress, or not.

SEC. 2. That the Secretary of the Interior, or the Secretary of the Senate, or the Clerk of the House of Representatives, as the case may be, shall immediately after the passage of this Act transmit to the Court of Claims for adjudication all claims for Indian depredations heretofore presented to the Interior Department or to Congress, with all vouchers, papers, proofs, and documents pertaining thereto, and upon the presentation of a petition on behalf of any claimant within the time hereinafter limited the same shall be there proceeded in under such rules as said Court may adopt.

SEC. 3. That the Attorney-General, or his assistants under his direction, shall appear therein to defend the United States and the Indians in all such actions, with the same power to interpose counter-claims, offsets, defenses for fraud, and other defenses as now given in said Court.

SEC. 4. That the same right of appeal to the Supreme Court of the United States existing in other cases in the Court of Claims shall exist in the cases considered under this Act.

SEC. 5. That no person shall be excluded from testifying in cases under this Act on account of being a party or interested; and the affidavits and other evidence heretofore filed in Congress, or in the Departments, in such cases may be considered by said Court, and such weight shall be given to such evidence as the Court may deem proper.

SEC. 6. That the Court of Claims shall in every judgment rendered under this Act find the tribe of Indians by which, or by members of which, the depredation was committed, and whether annuities or other funds are due to said tribe from the United States.

SEC. 7. That the amount of any judgment so rendered shall be charged against the tribes by which, or by members of which, the Court shall find that the depredation was committed, and shall be deducted and paid in the following manner: First, from any annuities due said tribe from the United States; secondly, if no annuities are due or available from any other funds due said tribe from the United States arising from the sale of their lands or otherwise; thirdly, if no such funds are due or available from any appropriations for the benefit of said tribe, other than appropriations for their current and necessary support, subsistence, and education; and fourthly, if no such annuity, fund, or appropriation is due or available, the amount of the judgment shall be paid from the public Treasury; *provided*, that any amount so paid from the public Treasury shall remain a charge against such tribe, and shall be deducted from any annuity, fund, or appropriation hereinafter designated which may hereafter become due from the United States to such tribe.

SEC. 8. That in all said claims which have arisen prior to the passage of this Act, whether heretofore presented or not, a petition on behalf of the claimant shall be presented to the Court within three years from the date hereof, and not thereafter; and in all such claims arising less than six years prior to the date hereof, or which may hereafter arise, such a petition shall be so presented within six years from the date of such depredation, and not thereafter; and all claims for Indian depredations not so presented within the time limited by this section shall be forever barred, and shall not be considered by any department of the Government.

Mr. Dolph. Mr. President, by the two bills just read it is designed to provide for the adjudication and payment of that class of claims against the Government, known as Indian depredation claims. By the first of these bills an appropriation is proposed for the payment of all such claims as have been duly presented to the Interior Department, examined and approved, and reported to Congress, and by the second it is proposed to provide for claimants whose claims for any reason have not been so examined and approved, a tribunal to which such claims can be presented and adjudicated according to law and the rules and practice of the Court.

On the sixteenth day of January, 1884, I introduced and had referred to the Committee on Indian Affairs a bill to provide for ascertaining losses sustained by citizens of the United States in Oregon, Washington and Idaho Territories, and in Northern California, by reason of Indian depredations committed during the period from 1855 to 1878 inclusive. The bill provided in substance for the appointment of three Commissioners to inquire into the extent and character of such depredations, and the description and value of the property destroyed or carried away, and the damage

sustained by citizens by reason thereof; and it also further provided the manner in which testimony should be taken, and such claims should be examined and reported by the Commissioners to the Third Auditor of the Treasury, and by him to the Secretary of the Treasury to be transmitted to Congress for an appropriation. That bill and a number of private bills for the relief of citizens for losses sustained by such depredations, introduced by me at the same session, were referred to the Committee on Indian Affairs, but none of them were ever reported.

Being desirous of presenting to the committee and to the Senate the reasons which, in my judgment, require that such claims should be paid without further delay, and fearing that if the bills which have just been read shall be first referred to the committee they will share the fate of those on the same subject, heretofore introduced by me and referred to the committee, I have concluded to address the Senate upon them before they are referred.

The civil status of the Indians in the United States has always been an anomaly. From an early period in the history of the Government the Indian tribes were treated in a degree as political bodies, and as possessing some of the functions of nationality, but as neither foreign nor domestic nations. Congress, however, by an Act approved March 3, 1871, provided that thereafter no recognition by treaty or otherwise should be made by the United States of the claim of any Indian tribe as being an independent nation, tribe, or power. In the articles of confederation it was declared that "the United States in Congress assembled have the sole and exclusive right and power of regulating the trade and managing all the affairs with the Indians not members of the States."

Under this provision Congress issued a proclamation September 22, 1783, prohibiting and forbidding all persons from making settlements on lands inhabited or claimed by Indians within the limits or jurisdiction of any State, and from purchasing or receiving any gift or cession of such lands or claims without the authority of Congress, and declaring every such unauthorized settlement, purchase, or cession null and void. It has been settled by decisions of the highest judicial tribunal of the country that the Indian tribes are not the owners of the Territories occupied by them, but that the title to the same is in the United States, subject to the right of occupancy by the Indians, and that such tribes are incompetent to transfer any rights to the soil, and that any conveyances of their lands by them are void *ab initio*, the right to the property not subsisting in the grantor; that the General Government holds the right of eminent domain as well as the title to the soil in the public lands subject to the right of occupancy by the Indians, and that, as was said by Chief Justice Marshall, in *Johnson vs. McIntosh*, 8 Wheaton, 543: "The Indian inhabitants are considered merely as occupants to be protected while in peace in the possession of their lands, but incapable of transferring an absolute title to others."

Acting upon this theory, the Government has never surveyed, sold, or disposed of the public lands prior to the extinguishment of the Indian right of occupancy, but has proceeded from time to time to terminate the occupancy of the Indians as the lands were needed for settlement, by conquest or purchase; and since the Act of March 3, 1871, keeps up the form of purchase of the right of occupancy, although not recognizing the Indian tribes as independent powers, and although the Indians are treated in all other respects as mere wards of the Government. The more sensible and consistent position under existing laws would be to treat the right of occupancy as a privilege only, which the Government may withdraw when the interests of civilization and of such wards, in the opinion of the guardian,

may demand it. Having assumed the absolute control of the Indians and treated them as personal wards, the Government should assume as absolute a control of their property and not permit the want of their consent to stand in the way of a disposition thereof, which, in the opinion of Congress, would be for their benefit.

The Indians in the United States are now, and have been for years, upon reservations, the boundaries of which have been fixed by the Government, and which are in charge of agents appointed by it, and are maintained to a great extent by annual appropriations from the Federal Treasury. Congress under the Constitution has power to regulate commerce with the Indian tribes, and under this power the United States has at all times exercised the exclusive control of the trade and intercourse with the Indians, and no one has ever been permitted to deal with them except under license from it. The first Act regulating trade and commerce with the Indians was passed May 19, 1796 (1 Stat., 469). Section 14 of this Act was as follows:

*And be it further enacted*, That if any Indian or Indians, belonging to any tribe in amity with the United States, shall come over or across the said boundary line into any State or Territory inhabited by citizens of the United States, and there take, steal, or destroy any horse, horses, or other property belonging to any citizen or inhabitant of the United States, or of either of the Territorial districts of the United States, or shall commit any murder, violence, or outrage upon any such citizen or inhabitant, it shall be the duty of such citizen or inhabitant, his representative, attorney, or agent, to make application to the superintendent, or such other person as the President of the United States shall authorize for that purpose; who, upon being furnished with the necessary documents and proofs, shall, under the direction or instruction of the President of the United States, make application to the nation or tribe to which such Indian or Indians shall belong, for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction in a reasonable time, not exceeding eighteen months, then it shall be the duty of such superintendent or other person authorized, as aforesaid, to make return of his doings to the President of the United States, and forward to him all documents and proofs in the case, that such further steps may be taken as shall be proper to obtain satisfaction for the injury. And in the meantime, in respect to the property taken, stolen, or destroyed, the United States guarantees to the party injured an eventual indemnification; *provided always*, that if such injured party, his representative, attorney, or agent, shall, in any way, violate any of the provisions of this Act, by seeking or attempting to obtain private satisfaction or revenge, by crossing over the line on any of the Indian lands, he shall forfeit all claim upon the United States for such indemnification; *and provided also*, that nothing herein contained shall prevent the legal apprehension or arresting within the limits of any State or district of any Indian having so offended; *and provided further*, that it shall be lawful for the President of the United States to deduct such sum or sums as shall be paid for the property taken, stolen, or destroyed by any such Indian, out of the annual stipend which the United States are bound to pay to the tribe to which such Indian shall belong.

This section was substantially reenacted in the Act of March 3, 1779 (1 Statutes, 747), in the Act of March 30, 1802 (2 Statutes, 143), and in the Act of June 30, 1834 (4 Statutes, 731). The changes from the original section made by the Acts of 1779 and 1802 were merely verbal, and all of the Acts contained the following clause, quoted from the Act of June 30, 1834:

*And, in the meantime, in respect to the property so taken, stolen, or destroyed, the United States guarantee to the person injured an eventual indemnification.*

And the Act of 1834 contained the following provision:

*And if the nation or tribe to which such Indian may belong receive an annuity from the United States, such claim shall, at the next payment of the annuity, be deducted therefrom and paid to the party injured; and if no annuity is payable to such nation or tribe, then the amount of the claim shall be paid from the Treasury of the United States.*

These provisions of the Act of 1834 remained in force, and claims for losses from Indian depredations were paid by the United States in accord-

ance therewith until the passage of the Act of February 28, 1859, Section 8 of which repealed the provision for the payment of these claims from the Treasury, and was in the following words:

*And be it further enacted*, That so much of the Act entitled "An Act to regulate trade and intercourse with the Indian tribes and preserve peace on the frontiers," approved June 30, 1834, as provides that the United States shall make indemnification out of the Treasury for property taken or destroyed in certain cases by Indians trespassing on white men, as described in the said Act, be and the same is hereby repealed; *provided, however*, that nothing herein contained shall be so construed as to impair or destroy the obligation of the Indians to make indemnification out of the annuities as prescribed in said Act.

By joint resolution passed June 25, 1860 (12 Statutes, 120), it was provided:

That the repeal by the eighth section of the Act of Congress approved the twenty-eighth day of February, 1859, of so much of the Act of Congress entitled "An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," approved June 30, 1834, as provides that the United States shall make indemnification out of the Treasury for property taken or destroyed in certain cases by Indians trespassing on white men, as described in said Act, shall not be construed to destroy or impair any right to indemnity which existed at the date of said repeal.

Claims for Indian depredations, arising prior to February 28, 1859, were therefore paid out of the Treasury, if there were no annuities payable to the tribes committing the depredations from which they could have been paid, and the payment of claims for depredations committed after February 28, 1859, was continued out of annuities due the tribe committing the depredations until the passage of the Act of July 15, 1870, Section 4 of which (now 2098 of the Revised Statutes) is as follows:

That no part of the moneys appropriated by this Act, or which may hereafter be appropriated in any general Act or deficiency bill, making appropriations for the current and contingent expenses of the Indian Department, to pay annuities due, or to be used and expended for the care and benefit of any tribe or tribes of Indians named herein, shall be applied to the payment of any claim for depredations that may have been or may be committed by such tribe or tribes, or any member or members thereof; and no claim for Indian depredations shall hereafter be paid until Congress shall make special appropriation therefor; and all Acts and parts of Acts inconsistent herewith are hereby repealed.

By an Act passed May 29, 1872 (17 Statutes, 190, now Section 466 R. S.), the Secretary of the Interior is required to prepare and cause to be published such regulations as he may deem proper, prescribing the manner of presenting claims arising under laws or treaty stipulations for compensation for depredations committed by the Indians, and the degree and character of the evidence necessary to support such claims, and to carefully investigate such claims as may be presented, subject to the regulations prepared by him; and it is provided that "no payment on account of said claims shall be made without a specific appropriation therefor by Congress."

Sections 2156 and 2157 of the Revised Statutes, being a part of the Act of June 30, 1834, as modified by the Act of February 28, 1859, and of July 15, 1870, provide:

SEC. 2156. If any Indian, belonging to any tribe in amity with the United States, shall, within the Indian country, take or destroy the property of any person lawfully within such country, or shall pass from Indian country into any State or Territory inhabited by citizens of the United States, and there take, steal, or destroy any horse or other property belonging to any citizen or inhabitant of the United States, such citizen or inhabitant, his representative, attorney, or agent may make application to the proper superintendent, agent, or subagent, who, upon being furnished with the necessary documents and proofs, shall, under the direction of the President, make application to the nation or tribe to which such Indian shall belong for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction in a reasonable time, not exceeding twelve months, such



superintendent, agent, or subagent shall make return of his doings to the Commissioner of Indian Affairs, that such further steps may be taken as shall be proper in the opinion of the President to obtain satisfaction for the injury.

Sec. 2157. The superintendents, agents, and subagents within their respective districts are authorized and empowered to take depositions of witnesses touching any depredations within the purview of the preceding sections, and to administer oaths to the deponents.

These sections have remained in force, and numerous claims for Indian depredations have since 1859 been presented to and audited by the Interior Department, notwithstanding the Government had virtually ceased to appropriate money for the payment of the claims thus audited. If it was intended by Congress, by the Act of 1859, to repudiate the obligation of the Government to its citizens to indemnify them for such losses it should have said so then, and not have held out to them delusive hopes by continuing to receive proofs of these claims and to audit them under regulations prescribed by its authority.

The claims examined and audited by the Interior Department have been reported at different times to Congress and are contained in the following executive documents, all being letters from the Secretary of the Interior to the House of Representatives:

House Executive Document No. 127, Twenty-fifth Congress, second session.

House Executive Document No. 311, Forty-first Congress, second session.

House Executive Document No. 11, Forty-second Congress, third session.

House Executive Document No. 65, Forty-third Congress, second session.

House Executive Document No. 147, Forty-fourth Congress, first session.

House Executive Document No. 135, Forty-seventh Congress, first session.

House Executive Document No. 10, Forty-seventh Congress, second session.

House Executive Document No. 23, Forty-eighth Congress, first session.

House Executive Document No. 102, Forty-eighth Congress, first session.

House Executive Document, No. 132, Forty-eighth Congress, first session.

House Executive Document No. 20, Forty-eighth Congress, second session.

House Executive Document No. 86, Forty-eighth Congress, second session.

House Executive Document No. 182, Forty-eighth Congress, second session.

House Executive Document No. 197, Forty-eighth Congress, second session.

By Act of March 3, 1885, the Indian appropriation bill, the sum of \$10,000 was appropriated for the investigation of certain Indian depredation claims, and it is provided in said Act that "in expending said sum the Secretary of the Interior shall cause to be made a complete list of all claims heretofore filed in the Interior Department, and which have been approved in whole or in part, and now remain unpaid; and also such claims as are pending, but not yet examined, on behalf of citizens of the United States, on account of depredations committed chargeable against any tribe of Indians by reason of any treaty between such tribe and the United States, including the name and address of the claimants," etc.

The first clause of this provision is construed by the Interior Department to comprehend all claims for Indian depredations, without reference to treaty obligations, which had been approved in whole or in part, and were unpaid and on file in this Department at the date of the passage of the Act.

The latter clause is construed to comprehend, and to require the examination of such unexamined claims in favor of citizens of the United States, on account of Indian depredations, as were pending at the passage of the

Act, and which are chargeable to Indians who were in amity with the United States, and bound by treaty obligations to make satisfaction therefor.

So that unintentionally, probably, Congress has, in the claims directed to be reported, made a distinction between claims of the same class, filed under the same law, and audited under the same regulations of the Interior Department, by requiring those only which had been approved before the passage of the Act, to be reported in cases in which they are not chargeable to the Indians under treaty stipulations.

By House Executive Document No. 125, being a letter from the Secretary of the Interior, dated March 11, 1886, to the Speaker of the House of Representatives, there was transmitted a report of the Commissioner of Indian Affairs, made in pursuance of said Act of March 3, 1885, containing a list of about forty-five hundred claims, approximating in amount, as is stated in the report, to about \$15,000,000. Some idea of the magnitude of the question of the adjudication and payment of these claims can be obtained by an inspection of this report, which I hold in my hand.

The list of claims with alphabetical indexes makes a volume of two hundred and ninety pages. Most of the claims which appear in this report have been heretofore reported to Congress from year to year by the Secretary of the Interior in his annual reports of depredation claims audited and allowed under the provisions of the Revised Statutes, and still the claimants have no assurance of the payment of their claims. We should temporize with this matter no longer. It can be better dealt with now than it ever can be hereafter.

Under the authority conferred upon the Secretary of the Interior by Section 466 of the Revised Statutes, there was issued July 13, 1872, by the Department rules and regulations, still in force, of which the following is a copy:

*Rules and regulations adopted by the Department of the Interior relative to the presentation and examination of claims on account of depredations committed by Indians.*

By the seventh section of the Act of Congress making appropriations for the Indian Department, approved May 29, 1872, it is enacted: "That it shall be the duty of the Secretary of the Interior to prepare and cause to be published such rules and regulations as he may deem necessary or proper, prescribing the manner of presenting claims arising under existing laws or treaty stipulations, for compensation for depredations committed by the Indians, and the degree and character of the evidence to support such claims; he shall carefully investigate all such claims as may be presented, subject to the rules and regulations prepared by him, and report to Congress, at each session thereof, the nature, character, and amount of such claims, whether allowed by him or not, and the evidence upon which his action was based; *provided*, that no payment on account of said claim shall be made without a specific appropriation by Congress."

In compliance with the requirement of the law as quoted above the following rules and regulations are prescribed:

1. Application for indemnity or satisfaction for the loss or injury sustained must be made by the claimant, his attorney or duly authorized agent, \* \* \* to the United States \* \* \* Indian agent, or subagent within whose jurisdiction or charge the nation, tribe, or band is to which the offenders or depredators belong.

2. The necessary documents and proofs must accompany the application of the claimant, his attorney, or agent, and should be in legal form, and consist—

*First*—Of the sworn declaration of the claimant, setting forth when and where the depredation was committed, and by what Indians, their tribe or nation being named; describing fully the property stolen or destroyed, and giving the quantity of each article or number, condition or quality thereof, and the just value of each article or piece of property at the time the same was so taken or destroyed. Should the depredation have been committed while the claimant was in the Indian country, he must state whether he was lawfully there, either having a license to trade with the Indians, a passport, or a permit from the proper Indian authorities, or was *en route* through said country to a place of ultimate destination at some point within the limits of any State or Territory not included within the limits of the reservation for any nation or tribe of Indians set apart by treaty provision or by executive order; and he in such declaration must further state whether any of the property so stolen or destroyed has subsequently been recovered by or for him, the claimant; and whether the claimant has at any time received part compensation



therefor, and, if so, how much, when, and from what source; and further, that the claimant has in no way endeavored to obtain private satisfaction or revenge.

*Second*—Of depositions of two or more persons having personal cognizance of the facts or any of them as embraced in the declaration of the claimant, which depositions must set forth the means of knowledge which deponents have as to the fact of the depredation, when, where, by what Indians, and under what circumstances the depredation was committed, of what the property consisted that was so taken or destroyed by the Indians, describing it as fully as practicable, and stating the value thereof. If the deponents, or any of them, were at the time of the depredation in the employment of the claimant it must be so stated, and in what capacity. In addition to the foregoing, the claimant must show, by his own evidence or that of other persons, that at the time the depredation was committed the property then stolen or destroyed was being properly guarded and cared for, and that the loss thereof was not occasioned by the negligence or carelessness of himself or employes.

3. The testimony adduced by the claimant must be taken before some officer authorized by law to administer oaths, or it may be taken before the proper \* \* \* Indian agent, or subagent. If taken before a Justice of the Peace, the official character of that person should be certified by some proper officer empowered thereunto. All interlineations or changes that it may be necessary to make in the testimony of any person testifying in behalf of the claimant, either before or at the signing of the same, must be duly attested by the officer before whom the testimony is sworn to and subscribed.

4. When the application, documents, and proofs shall have been received by the \* \* \* Indian agent, or subagent, said officer shall carefully investigate the case; shall ascertain by inquiry of reliable persons, from advertised prices, or otherwise, whether the prices fixed by the claimant upon the articles of property mentioned in the claim are just and fair as compared with the market prices ruling at the time in the State or Territory in which the depredation was committed, with due allowance for enhancement of price by reason of transportation; and, where it is possible to procure it, said officer shall, if deemed advisable, take testimony as to the credibility of the claimant, or of any person testifying in his behalf; and also respecting the statements set forth in the application, documents, and proofs submitted by the claimant. Upon the performance of this duty, the \* \* \* Indian agent, or subagent, will, without unnecessary delay, present the case to the proper nation or tribe assembled in council, according to the custom of such nation or tribe, and, after fully explaining it to them, he will then and there demand satisfaction for the claimant. If within a reasonable time the nation or tribe shall not have complied with such demand, the fact of the depredation by some of their people being admitted in such council, or if they deny the charge as made and peremptorily refuse to render any satisfaction, the \* \* \* agent, or subagent, will in such case submit a report of the proceedings had, together with all the papers, to the Commissioner of Indian Affairs. Such report shall state whether the Indians in council recognized, remembered, and admitted the depredations charged; and, if so, how far and with what particularity the allegations of the claimant respecting such depredations were borne out by the recollections and acknowledgments of the Indians in reference thereto.

5. The Commissioner of Indian Affairs will cause all claims received by him as above noticed to be duly registered and filed in his office, and shall, as soon thereafter as practicable, cause the same to be carefully examined, and then forwarded, with a report of his views and opinion in each case, to the Secretary of the Interior for the action of the Department.

C. DELANO, Secretary.

DEPARTMENT OF THE INTERIOR, July 13, 1872.

And under the Act of March 3, 1885, the Commissioner of Indian Affairs issued a circular, of which the following is a copy:

[Circular No. 159.]

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS, }  
Washington, D. C., —, 188—. }

To — — —:

By an item in the Act of Congress, approved March 3, 1885 (Stats. 23, p. 376), the Secretary of the Interior is required to investigate certain depredation claims as therein indicated, and make report thereof to Congress at its next regular session.

The evidence on file in — depredation claim for \$— is not made in compliance with the rules prescribed by the Department, and is defective and inadequate to satisfactorily establish the claim. Any additional evidence in support of the claim must be submitted *immediately*, and if none is submitted within — days the case will be examined, adjudicated, and disposed of upon the testimony now on file and forwarded to the Secretary of the Interior for transmittal to Congress at its next session, as required by law.

All documents and proofs in support of the claim must be in legal form, consisting of: *First*—Of the sworn declaration of the claimant, setting forth when and where the depredation was committed, and by what Indians, their tribe or nation being named; describing fully the property stolen or destroyed, and giving the quantity of each article, or number, condition, or quality thereof, and the just value of each article or piece of property at the time the same was so taken or destroyed. Should the depredation have been

committed while the claimant was in the Indian country, he must state whether he was lawfully there, either having a license to trade with the Indians, a passport, or a permit from the proper Indian authorities, or was *en route* through said country to a place of ultimate destination at some point within the limits of any State or Territory not included within the limits of the reservation for any nation or tribe of Indians set apart by treaty provision or by executive order; and he, in such declaration, must further state whether any of the property so stolen or destroyed has subsequently been recovered by or for him, the claimant; and whether the claimant has at any time received part compensation therefor, and, if so, how much, when, and from what source; and further, that the claimant has in no way endeavored to obtain private satisfaction or revenge.

*Second*—Of depositions of two or more persons having personal cognizance of the facts or any of them, as embraced in the declaration of the claimant, which depositions must set forth the means of knowledge which deponents have as to the fact of the depredation, when, where, by what Indians, and under what circumstances the depredation was committed, what the property consisted of that was so taken or destroyed by the Indians, describing it as fully as practicable, and stating the value thereof. If the deponents, or any of them, were at the time of the depredation in the employment of the claimant, it must be so stated, and in what capacity. In addition to the foregoing, the claimant must show, by his own evidence, or that of other persons, that at the time the depredation was committed the property then stolen or destroyed was being properly guarded and cared for, and that the loss thereof was not occasioned by the negligence or carelessness of himself or employes.

Commissioner.

While the Government is thus, by neglecting to make appropriations, ignoring the claims of its own citizens it is careful to protect the rights of the Indians. Provision is made by law for the recovery from any white person of twice the value of any property of an Indian taken, injured, or destroyed by such white person and for the payment of the just value of such property from the Treasury of the United States if the offender is unable to pay the same or can not be apprehended and brought to trial. These provisions are found in Sections 2154 and 2155 of the Revised Statutes, which are as follows:

SEC. 2154. Whenever, in the commission, by a white person, of any crime, offense, or misdemeanor within the Indian country, the property of any friendly Indian is taken, injured, or destroyed, and a conviction is had for such crime, offense, or misdemeanor, the person so convicted shall be sentenced to pay to such friendly Indian to whom the property may belong, or whose person may be injured, a sum equal to twice the just value of the property so taken, injured, or destroyed.

SEC. 2155. If such offender shall be unable to pay a sum at least equal to the just value or amount, whatever such payment shall fall short of the sum shall be paid out of the Treasury of the United States. If such offender can not be apprehended and brought to trial, the amount of such property shall be paid out of the Treasury. But no Indian shall be entitled to any payment out of the Treasury of the United States, for any such property, if he, or any of the nation to which he belongs, have sought private revenge, or have attempted to obtain satisfaction by any force or violence.

The Committee on Indian Affairs at the present session has reported upon two bills, one (S. 145) for the relief of James Bainter, and the other (S. 146, report No. 130) for the relief of George S. Comstock, upon what appears to me to be a new theory for getting rid of this class of claims. The reports in these two cases are substantially alike. The one in the case of George S. Comstock is as follows:

The Committee on Indian Affairs, to whom was referred the bill (S. 146) for relief of George S. Comstock, have considered the same, and in accordance with the views of the Commissioner of Indian Affairs, given in the inclosed letter, which is made part of this report, they recommend the indefinite postponement of the bill.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS, }  
WASHINGTON, D. C., February 11, 1886. }

SIR: I am in receipt, by reference, of your letter of the sixth instant, addressed to the honorable Secretary of the Interior, referring bill (S. 146) for the relief of George S. Comstock, with a request for such information relative thereto as this Department may possess, and in reply I have the honor to report that it appears from the records of this office that a claim of George S. Comstock, amounting to \$18,908 53 on account of depredations alleged to have been committed by Cheyenne and Sioux Indians, on the ninth and tenth

days of August, 1864, was filed in this office June 22, 1882; on the eighth July following the claim was transmitted to United States Indian Agent McGillycuddy, at Pine Ridge agency, Dakota, with directions to carefully examine all the facts connected therewith, and, after submitting the same to the Indians in council, to report the result, together with his recommendation of allowance or disallowance. Under date of January 21, 1884, Agent McGillycuddy returned the claim with his report, recommending favorable action. On the second of February following, the report of this office, recommending an allowance of \$12,404 36, to be paid from moneys due Sioux of different tribes, including Santee Sioux of Nebraska, was submitted to the honorable Secretary of this Department, and by him transmitted under date of February 15, 1884, to the Speaker House of Representatives, and appears, by Executive Document No. 102, Forty-eighth Congress, first session, to have been referred to the Committee on Indian Affairs.

The claim was returned to this office for reexamination in pursuance to the provisions of the Act approved March 3, 1885, and was again examined and reported to the honorable the Secretary of the Interior, under date of November thirtieth last, with the recommendation that the claim be dismissed as barred by force of the seventeenth section of the Act approved June 30, 1834 (4 Statutes, 731, 732), and the recommendation for disallowance was concurred in by the honorable Secretary, under date of tenth December last.

The papers in the case are now on file in this office. Senate Bill 146 is herewith returned.

Respectfully,

J. D. C. ATKINS, Commissioner.

Hon. H. L. Dawes, Chairman Committee on Indian Affairs, United States Senate.

Section 17 of the Act of June 30, 1834, referred to in this report, was what is now Section 2156 of Revised Statutes. It contained the clause by which the United States guaranteed to the party injured by the taking or destroying of his property by Indians an eventual indemnification, and also the following proviso:

*Provided, That if such injured party, his representative, attorney, or agent, shall in any way violate any of the provisions of this Act by seeking or attempting to obtain private satisfaction or revenge, he shall forfeit all claim upon the United States for such indemnification; and provided, also, that unless such claim shall be presented within three years after the commission of the injury, the same shall be barred; and if the nation or tribe to which such Indian may belong receive an annuity from the United States, such claim shall at the next payment of the annuity be deducted therefrom and paid to the party injured, and if no annuity is due to such nation or tribe then the amount of the claim shall be paid from the Treasury of the United States.*

These provisions for the payment of claims out of the Treasury and out of annuities were repealed by the Acts of February 28, 1859, and July 15, 1870. When these provisions were repealed the limitation of the statute, in my judgment, ceased to be of force. After such repeal there could be no payment of such claims without the authority of Congress, and a statute of limitation against Congressional action would be useless. That part of the statute was not, therefore, included in the Revised Statutes, and if in force when the Revised Statutes were enacted was expressly repealed by Section 5596. The Commissioner of Indian Affairs and the Secretary of the Interior, however, notwithstanding the claims in question were presented and audited by their predecessors under the rules prescribed by the Interior Department and reported to Congress for its action have, upon reexamination of the claims, discovered, as they suppose, that they are barred by a statute of limitations which originally applied to the payment of claims by the Department without Congressional action and which has long since ceased to be operative, and the Committee on Indian Affairs appears to have adopted the views of the Department.

Since the provisions for the payment of these claims out of the Treasury and out of annuities were repealed and claimants could only look to Congress for legislation authorizing their payment it would be palpably unjust to apply any statute of limitation to them or to discriminate between claims equally meritorious. If after the long delay of Congress to act upon these claims, and after the Government has, by a course of conduct continued for over a quarter of a century, induced these claimants to believe their

claims are just and that they would be paid by the Government, they are not to be paid, some better excuse should be found than that they were not presented in time.

I have examined the debates in Congress upon the subject of the obligation of the Government to protect its citizens against depredations by the Indian tribes and to pay them for losses incurred by such depredations, and I am surprised to find that neither when the general laws under which the Government indemnify its citizens for such losses prior to the passage of the Act of 1859, providing that depredation claims should not thereafter be paid out of the Treasury, nor when the Act of 1871 providing that such claims should no longer be paid from annuities due the tribes committing the depredations without the consent of Congress, or when any of the private Acts for the payment of such claims which have been passed were under consideration, was there any considerable discussion of the principles upon which such indemnity should be made or withheld. Congress appears to have assumed that such an obligation existed and to have acted upon it for over sixty years after the organization of the Government and to have suddenly, without much consideration or discussion, changed its policy and repudiated its obligations to its citizens in this regard if one exists.

I find myself, therefore, compelled, in support of the proposition that it is the duty of the Federal Government to afford protection to its citizens against Indian depredations, and to make good their losses arising from inadequate protection, except in so far as the uniform course of the Government prior to 1859 tends to show the existence of such an obligation, to resort to first principles. I admit that the obligation, if it exists, must be traced to the duty of the Government to afford protection to each of its citizens in the enjoyment of life, liberty, and property, which lies at the foundation of the social compact. I need not stop to show that such a general obligation exists. Government is organized society. The word designates the aggregate powers, whatever the form, to which the exercise of sovereignty belongs in a State. It can exist no longer than it can compel the submission of all the citizens of the State to its authority, expressed in accordance with the fundamental law which constitutes the social compact.

Submission to the Government is the primary obligation of the citizen, and protection of the citizen is the correlative obligation of the Government. Theoretically, it is the duty of the Government to afford protection to all its citizens in the enjoyment of life, liberty, and property, not only within its borders, but everywhere they may lawfully go. While its obligation to afford protection is sometimes by law devolved by the State upon municipal corporations intrusted with certain powers of Government, the duty is the duty of the State, the power so exercised being derived from the State. The Government of the United States forms no exception to this general rule. Within the powers conferred upon it by the Federal Constitution and for the purposes of its creation it demands the allegiance of the citizen, and to the extent of those powers it owes every citizen protection. As Congress has power "to declare war," "to raise and support armies," "to provide and maintain a navy," and the States are prohibited from keeping ships or troops in time of peace, from entering into any agreement or compact with another State, or with a foreign power, or to engage in war, it becomes the evident duty of the General Government to protect the citizens of the United States in the enjoyment of life, liberty, and property against foreign powers and their citizens and subjects, and the obligation of the Government to do this has never been denied, and in the discharge of this

obligation it has declared war, called into use the army and navy, taxed the people, and borrowed money upon the public credit.

The Senator from Georgia, during the discussion of the educational bill, cited an Act of Congress, approved by President Washington, appropriating \$4,539 06 to indemnify citizens of the United States for money paid by them as a ransom to the Government of Algiers (Act approved May 30, 1796). This Act was but a recognition of an obligation of the Government to its citizens; which, so far as I know, has never been repudiated in similar cases. The United States have never failed to demand of foreign nations satisfaction for injuries done by such foreign nations or their subjects to the persons or property of its citizens. The war with Algiers was waged for the purpose of punishing that State for depredations upon our commerce and the unlawful imprisonment of our citizens. The war of 1812 was caused by the interference of Great Britain with the rights of our merchant marine and of our sailors; and to-day, should the most powerful nation upon the earth, or the citizens of that nation, upon the high seas or within the jurisdiction of such nation, where our citizens, under treaty stipulation, have a lawful right to go for pleasure or profit, forcibly take or destroy the property of an American citizen, and refuse to make restitution or submit the matter to arbitration, war would be declared against that nation, and the administration which should refuse to demand indemnity for such an outrage would be hurled from power by an indignant people.

The obligation of a government to protect its citizens in a foreign country is thus cited by Wheaton on International Law (Boyd's edition, page 207):

The American citizen who goes into a foreign country is entitled to the protection of our Government; and if, without the violation of any municipal law, he should be unjustly oppressed, he would have a right to claim protection of his Government, and the interference of the American Government in his favor would be considered a justifiable interference.

This is from Halleck (page 276):

If a State should neglect to enact the requisite laws to restrain its subjects and citizens from systematic and repeated aggressions upon the rights of others, and to enforce such laws when made, it not only exposes itself to the just hostility of the parties aggrieved, but virtually becomes an outlaw from the society of nations, and, by the well established principles of international jurisprudence, is liable to be attacked and punished by all.

This is from another American authority, Woolsey (§ 62):

Foreigners admitted into a country are subject to the laws. They are \* \* \* entitled to protection, and failure to secure this or any act of oppression may be a ground of complaint, of retorsion, or even of war, on the part of their native country.

Vattel states the principle thus:

If a nation should refuse or fail to pass the laws necessary to restrain its citizens from aggression upon other States, or upon their citizens; or if, such laws being enacted, the officers of the State neglect to enforce them, and such aggressions by individuals result therefrom, the State is unquestionably responsible for the injury.

Hall, a recent writer in England, says:

*Prima facie* a State is, of course, responsible for all acts or omissions taking place within its territory, by which another State or the subjects of the latter are injuriously affected. \* \* \* If the acts done are undisguisedly open or of common notoriety, the State is obviously responsible for not using proper means to repress them. As obviously it becomes responsible, by way of complicity, after the act, if it does not inflict punishment to the extent of its legal powers.

Phillimore says (Volume II, chapter 2):

The State to which the foreigner belongs may interfere for his protection when he has received positive maltreatment, or when he has been denied ordinary justice in the foreign country. The State of the foreigner may insist upon reparation immediately in the former case. In the latter the State must be satisfied that its citizen has exhausted the means of legal redress afforded by the tribunals of the country in which he has been injured. If those tribunals are unable or unwilling to entertain or adjudicate upon his grievance, the ground for interference is fairly laid. But it behooves the interfering State to take the utmost care: first, that the commission of the wrong be clearly established; secondly, that the denials of the local tribunals to decide the question at issue be no less clearly established. It is only after these propositions have been irrefragably proved that the State of the foreigner can demand reparation, and it is not until after the executive, as well as the judicial, authorities have refused redress, that recourse can be had to reprisals, much less to war.

Our relations with the Indian tribes are as much under the exclusive power of the General Government as our relations with foreign nations. Congress has power under the Federal Constitution, and has always exercised it, to regulate commerce with the Indian tribes. If the relations between the United States and the Indians are in any sense similar to those between the United States and foreign nations, then it is the duty of the General Government to afford its citizens protection against the Indian tribes; but I shall proceed to show that such is not the true relation, and that the obligation of the Government in this regard rests upon stronger grounds.

Predicated upon the fourth section of the fourth article of the Constitution, which provides:

The United States shall guarantee to every State in this Union a republican form of Government, and shall protect each of them against invasion, and on application of the Legislature, or of the Executive (when the Legislature can not be convened), against domestic violence—

And upon the latter part of the tenth section of the first article of the Constitution, which is as follows:

No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

The States and Territories have always preferred claims against the General Government for expenses incurred by them on account of volunteers and militia called out for their protection against hostile Indians, and where the emergency was such as to require action before the United States could or did take effective measures for their protection there is an unbroken line of precedents for the payment of such claims by the General Government.

For every wrong there should be a remedy. If one citizen of a State injures another in person or property the State ought to provide for the redress of that wrong by legal methods; and whenever the State, or municipal corporation within a State, fails to afford such reasonable protection as is within its powers to the citizen, the State or municipal corporation upon the plainest principles of justice should be required to indemnify the citizen for any loss sustained by reason of such failure.

The States are powerless under the Federal Constitution to protect their citizens from the Indian tribes. It is true that in case of actual Indian hostilities they may repel invasion and drive the murderous savages back to their cities of refuge—the reservations—but within them they are safe under the protecting ægis of the Federal authority. The States can not demand or enforce satisfaction from the Indians for the losses sustained by

their citizens. The Federal Government interposes itself between the States and their citizens to shield the Indians from the ordinary and natural consequences of their acts. The citizen can not justly demand that recourse against the State which is allowed by the laws of many countries and many of the States for losses occasioned by lawlessness and violence, and can only look to the Federal Government for redress. Laws providing for making good at the public expense the losses of those who have been so unfortunate, as, without their own fault, to be injured and to suffer the loss of their property by acts of lawlessness and violence which it was the duty of the Government to prevent, have existed from an early period.

It was one of the institutions of Canute which was recognized by the Saxon laws that when any person was killed and the slayer had escaped, the ville should pay forty marks for his death, and if it could not be raised in the ville then the hundred should pay for it.

In the statutes of Manchester (13 Ed. I, chapter 1, page 1) provision is made touching the crimes of robbery, murder, and arson that if the country, *i. e.*, the jury, would not answer for the bodies of the offenders, the people dwelling in the county were to be amenable for the robberies and the damages sustained, so that the whole hundred where the robbery was committed, with the franchise thereof, should be amenable.

An Act for consolidating and amending the laws of England relative to remedies against the hundred (7 and 8 Geo. IV, ch. 31) repealed several prior Acts providing remedies against the hundred for damage occasioned by persons violently and tumultuously assembled, and provided a new method of procedure. As the hundreds were not corporations the action was to be brought against the Constable, and the judgment being rendered the Sheriff was to draw his warrant on the County Treasurer for the amount of the recovery, and the money was to be collected by taxation from the hundred liable.

An Act of the Legislative Assembly of the State of New York entitled "An Act for compensating parties whose property may be destroyed in consequence of mobs or riots," passed April 13, 1855, provides for the bringing of an action to be prosecuted to judgment according to the usual modes of prosecuting suits against cities and counties by persons sustaining losses by destruction of property by mobs or riots, and under its provisions judgments were recovered against New York City by citizens whose property was destroyed by the draft riots of 1863.

The Legislative Assembly of Pennsylvania, by an Act approved May 31, 1841, made the city of Philadelphia liable for property destroyed by a mob, and that Act was by an Act approved March 20, 1849, extended to Allegheny County, and under its provisions parties whose property was destroyed by mobs at Pittsburgh during the riots of July, 1877, recovered judgment against the county.

Similar statutes are in force in the following States: Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Rhode Island, South Carolina, and Wisconsin.

The laws of these States, as we have seen, are based upon a policy which is coeval with the laws of England.

The United States have assumed the control and management of the Indians, and in any possible view of the case should be held liable for their torts. If it be made to appear that any domestic animal is vicious and accustomed to do hurt, and that the owner has been notified of the fact, a duty is then imposed upon him to keep the animal secure, and he is responsible for the mischief done by the animal in consequence of a failure to observe the duty, and the duty to protect against vicious animals is imposed

upon the keeper irrespective of ownership. The duty of one who should undertake to keep a dangerous wild animal would be even greater than that imposed upon the keeper of a vicious animal.

The practical relation of the General Government to the Indian tribes has been for years and is now that of guardian and ward. The Government has taken and exercised control of the persons and estates of the Indians. The general rule is that an infant is responsible for his torts as any other person would be, and certainly the Indian wards of the Government are entitled to no greater immunity than infants under guardianship. The Indians to-day, whether they are considered as owners of the soil of the reservations occupied by them or only as having the right of occupation, which must be extinguished by purchase before it is open to settlement under the land laws, are wealthy. Their average individual wealth is probably far above the average wealth of the citizens of the United States and of any other civilized country.

The total number of Indian reservations in 1880 was 147; total acreage, 154,436,302; total number of Indians, exclusive of the natives of Alaska, was 253,934, which gives about 603.41 acres of land to each Indian. The Government is from year to year extinguishing the right of occupancy of its Indian wards to these lands and paying large sums to the Indians therefor; it also makes large appropriations from the Treasury for their support and education, and at the same time shields their property from the just demands of its citizens for losses on account of property stolen or destroyed.

The obligation of the General Government to support and educate the Indian, whatever may be its origin or extent, is a national obligation. There is no reason or justice in assuming that it must be discharged at the expense of individual citizens, and whenever the National Government refuses to pay the just demands of its citizens against the Indian tribes out of moneys due from the Government to such tribes, and which by treaty stipulations with them the Government has a right to retain and pay to its citizens in satisfaction of their claims, or which, according to international law, it would, in the exercise of its duty to protect the rights of its citizens, have the power to retain, and pays such moneys to the Indian tribes or expends it for their support and education, it discharges a national obligation at the expense of individual claims, and upon the plainest principles of justice must be substituted for the Indian tribes, and is in duty bound to make satisfaction to its citizens.

By the treaty between the United States and France, promulgated by the President December 21, 1801, the United States was relieved from certain embarrassing obligations to France arising under the treaty of alliance with that country of February 6, 1778, and the treaty of amity and commerce of the same date, which obligations were no less than to guarantee the possessions of France in America, and of important privileges for the armed ships of France, and a promise of American convoy to French commerce, and in return set off and released the individual claims of her citizens against the French Government arising from the spoliation of our commerce by France. Eighty-four years afterward, at the last Congress, long after the original claimants and two succeeding generations had passed away, Congress provided for the payment of the private claims thus bartered away by the Government.

On January 17, 1870, Mr. Sumner made an exhaustive report upon these French spoliation claims, in which the grounds of the liability of the Government were clearly and forcibly stated, and from which I quote the following:

Had the claims on each side been "national," no subsequent question could have occurred, for each would have extinguished the other in all respects forever. It was the peculiarity in this case that on one side the claims were "national" and on the other side "individual." But a set-off of "individual" claims against "national" claims must, of course, leave that Government responsible which has appropriated the "individual" claims to this purpose. The set-off and mutual release is between nation and nation; but if the claims on one side are only "individual," and not "national," the nation which, by virtue of this consideration, is released from "national" obligations must be substituted for the other nation as debtor, so that every "individual" whose claims are thus appropriated can confidently turn to it for satisfaction. On this point there can be no doubt, whether we regard it in the light of common sense, reason, duty, Constitution, or authority.

(1) According to common sense, any "individual" interest appropriated to a "national" purpose must create a debt on the part of the nation, still further enhanced if through this appropriation the nation is relieved from outstanding engagements already the occasion of infinite embarrassment, and hanging like a drawn sword over the future.

(2) According to reason, any person intrusted with the guardianship of particular interests becomes personally responsible with regard to them, especially if he undertakes to barter them against other interests for which he is personally responsible. Thus, an attorney sacrificing the claims of his clients for the release of his own personal obligations becomes personally liable, and so also the trustee appropriating the trust fund for any personal interest becomes personally liable. All this is too plain for argument, but it is applicable to a nation as to an individual. In the case now before your committee, our Government was attorney to prosecute "individual" claims of citizens, and also trustee for their benefit, to watch and protect their interests, so that it was bound to all the responsibilities of attorney and trustee, absolutely incapacitated from any act of personal advantage, and compelled to regard all that it obtained, whatever form of value it might assume, whether money or release, as a trust fund for the original claimants.

(3) Duty, also, in harmony with reason, enjoins upon government the protection of citizens against foreign spoliations and the prosecution of their claims to judgment. Claimants are powerless as "individuals." Their claims are effective only when adopted by the nation. This duty, so obvious on general principles, was reinforced in the present case by the special undertaking of Mr. Jefferson, already adduced, when he announced that he "had it in charge from the President to assure the merchants of the United States concerned in foreign commerce and navigation that due attention will be paid to any injuries they may suffer on the high seas or in foreign countries." Such a duty, thus founded and thus openly assumed, could not be abandoned on any inducement proceeding from France without a corresponding responsibility toward those citizens whose interests were allowed to suffer. A waiver of national duty, especially where made for the national benefit, must entail national obligation.

(4) The Constitution also plainly requires what seems so obvious to common sense, reason, and duty when it declares that "private property shall not be taken for public use without just compensation." Here "private property," to a vast amount, was taken for "public use," involving the peace and welfare of the whole country; and down to this day the sufferers are petitioning Congress for that "just compensation" solemnly promised by the Constitution.

(5) Public law is also in harmony with the Constitution in this requirement. According to Vattel, the sovereign may, in the exercise of his right of eminent domain, dispose of the property, and even the person, of a subject, by a treaty with a foreign power; "but," says this eminent authority, "as it is for the public advantage that he thus disposes of them, the State is bound to indemnify the citizens who are sufferers by the transaction." (Vattel, Law of Nations, Book 4, ch. 2, §12.) Words more applicable to the present case could not be employed.

This reasoning applies with equal force to the case under consideration, in which the United States, guardian of the Indian wards and of the interests of its own citizens, to save expenditures from its Treasury on account of such wards, interposes its authority to prevent the appropriation of the property of its wards to compensate its own citizens for losses arising from the torts of such wards. The analogy is complete.

In the discharge of its obligation to protect its citizens' from losses from Indian depredations, the Government has in many instances, in treaties with the Indian tribes, stipulated for the payment, out of annuities coming to such tribes, of claims against them for depredations committed on the property of white men. In other treaties the Indians have been required to agree to use their best efforts to return stolen property and to punish offenders. In others the United States has stipulated that the Indians should be paid by the Government for depredations committed upon their property by white men. I will submit, at the close of my remarks, lists of these treaties.

Numerous special acts for the payment of the losses of citizens on account of Indian depredations have been passed by Congress, extending from 1819 up to last session, so that precedents are not wanting for such payment, even since the provisions for the payment of such claims out of the Treasury and out of annuities without special appropriations were repealed.

I have prepared a list of such special Acts (but which I am not certain contains them all) showing in each case whether payment was made out of the Treasury or from Indian annuities. The total amount of the appropriations from the Treasury is \$1,604,028 25. The total appropriations from Indian annuities is \$197,716 37. These totals do not include the sum paid under the general laws heretofore referred to.

The Senate amendment striking out of the Indian Appropriation Bill of last session the provisions for the payment of sundry depredation claims, was adopted, upon the ground that it was general legislation upon an appropriation bill. But with strange inconsistency the Senate Committee on Appropriations reported the Sundry Civil Appropriation Bill with a clause appropriating \$46,770 22 to pay H. C. Oburn, out of annuities, for depredations committed by the Cheyenne and Arapaho Indians, and the bill passed with the provision.

Able reports have been made upon some of the private bills which have been passed by Congress for payment of such claims, in which the grounds of the liability of the Government are stated with much force. From Report No. 780, made by Mr. Comingo at the first session of the Forty-third Congress, upon the bill (H. R. 3315) for the relief of John Fletcher, I quote the following:

Such being the facts in the case, is the Government liable to indemnify claimant for his said loss? That we may be able to arrive at a satisfactory and just conclusion in the premises, it may be well to consider the relations the Indians bear to the Government, and the legislation that affects that relation. Between them and the citizens of the United States legislation has interposed a "high wall and a deep ditch," and has thereby left the latter without remedy, if the Government is not liable for the depredations of those around whom it has thrown its protecting arms, and between whom and its citizens it has interposed insuperable barriers.

The Indians have long been regarded and treated as the wards of the Government. This relation was recognized and acted upon almost three quarters of a century ago, and at no time since has it been disclaimed. As far back as 1802 our ancestors saw the propriety and necessity of protecting the then feeble Republic from the rapacity and violence of that race, and provided means of indemnity for spoliations committed by such of them as were in "amity with the United States." (2 Stat. at Large, page 143.)

This liability and promise to indemnify continued as a part of the written law of the land from that time until 1859, when, as we shall presently see, the promise, but not the liability, was revoked by Congress. The liability, in the opinion of your committee, did not depend upon, nor was it created by the promise. It existed independent of the latter—the latter being a simple recognition of the former; and, in the opinion of your committee, the liability has not yet been ignored, but to the contrary has been recognized in all subsequent legislation on the subject, although the express promise of indemnity has been recalled.

The Trade and Intercourse Act of 1834 expressly repeals that of 1802 (4 Stats. at Large, page 734); but by the seventeenth section of said Act (4 Stats. at Large, page 731) provisions are made for full indemnity, and the same is guaranteed by the Government. This statute remained in force from the thirtieth of June, 1834, to the twenty-eighth of February, 1859, at which time it was repealed. The repealing clause is as follows:

"And be it further enacted, That so much of the Act entitled 'An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers,' approved June 30, 1834, as provides that the United States shall make indemnification out of the Treasury for property taken or destroyed in certain cases by Indians trespassing on white men, as described in said Act, be and the same is hereby repealed; provided, however, that nothing herein contained shall be so construed as to impair or destroy the obligation of the Indians to make indemnification out of the annuities, as prescribed in said Act." (11 Stats. at Large, page 401, section 8.)

Let it be remembered that this leaves in force all of said Act, except the clause that guarantees indemnity out of the Treasury. The seventeenth section of the Act of June 30, 1834, contains the following among other provisions:



"Provided, That if such injured party, his representative, attorney, or agent, shall in any way violate any of the provisions of this Act, by seeking or attempting to obtain private satisfaction or revenge, he shall forfeit all claims on the United States for such indemnification."

Thus, we find the citizens of the United States are wholly without remedy for wrongs and injuries perpetrated by the Indians unless by reason of the peculiar relationship they sustain to the Government, and the exclusive guardianship over them, assumed by the latter, it is responsible for their willful and unprovoked trespasses.

The Act of July 15, 1870 (16 Stats. at Large, section 4, page 360), forbids the use of any part of the annuities then due, or thereafter to become due the Indians designated in the Act, in payment of claims growing out of their depredations. It should be observed that it does not ignore the liability of the Government in such cases, but rather recognizes it, by providing that claims of that character shall not be paid out of annuities, and that they may be paid by a special appropriation made for that purpose by an Act of Congress.

The section last referred to, reads as follows:

"That no part of the moneys hereby appropriated by this Act, or which may hereafter be appropriated in any general Act or deficiency bill making appropriations for the current and contingent expenses of the Indian Department, to pay annuities due to or to be used and expended for the care and benefit of any tribe or tribes of Indians named herein, shall be applied to the payment of any claim for depredations that may have been or that may be committed by said tribe or tribes, or any member or members thereof; and no claims for Indian depredations shall hereafter be paid, until Congress shall make special appropriations therefor; and all Acts or parts of Acts inconsistent herewith are hereby repealed."

By the seventh section of an Act approved May 29, 1872 (17 Stats. at Large, page 190) the last clause of the foregoing section is reenacted, and it is made the duty of the Secretary of the Interior to prepare and publish such rules and regulations as he may deem necessary, prescribing the manner of presenting claims for compensation for depredations committed by Indians, and the degree and character of the evidence necessary to support the same, and to report to Congress at each session thereof, the nature and character, etc., of such claims, whether allowed by him or not, and the evidence on which the action was based.

Provisions are thus made for ascertaining the extent of injuries that may be inflicted on citizens of the United States; the result of these injuries we call claims, and we provide that they may be paid out of our General Treasury, and that they shall not be paid out of the annuities due or to become the Indians. If we do not thereby recognize a right on the part of those who suffer from the depredations of these people to recover the actual damages they may sustain, what is the meaning and effect of all this legislation? Why do we forbid the injured to redress their own grievances? and why lock up the annuities of those who despoil our citizens, and hold out a pretended promise of payment?

Congress may make appropriations to pay these losses. This is plain. But it is insisted by some that there is no legal liability to pay them. If this be true, when did the liability cease? Why have we continued to pay some of these claims, and why make provisions for prosecuting them in the manner in which we have done? and why do we provide for paying them out of the Treasury? If they are not valid claims, by what authority can we appropriate money out of the Treasury to pay them? The right of recovery depends, in each case, on the particular facts that bear upon it. In this respect it does not differ from the right of recovery in any civil action, such as assumpsit, covenant, or trespass.

And from Report No. 253, made by Mr. Mason in the House of Representatives at the Forty-seventh Congress, upon the bill (H. R. 2824) for the relief of William Franklin Grounds, I quote the following:

Your committee are satisfied that the claim of Mr. Grounds is a just one, and that the Government is under obligation to compensate him for these losses. In arriving at these conclusions, your committee are guided by numerous legislative precedents in cases similar to this, and by the principles declared by eminent publicists. They believe that it would be in violation of the spirit of our institutions to impose on one citizen the burdens which should be borne by all, and that the citizen who pays taxes, bears arms, serves on juries, and bears his just proportion of the burdens of Government, and complies with all its exactions, is entitled to security in person and property, and to the prompt fulfillment by the Government of all the obligations it is under to him as a citizen.

The Committee on Indian Affairs of the United States Senate, first session, Thirty-fourth Congress, to whom was referred a bill authorizing the payment of certain claims for Indian depredations, and which the equities were not as clear and strong as those which exist in this case, say:

The spoiliations for which redress is now sought were caused by predatory expeditions, undertaken without lawful authority and without cause, as likewise without the usual formalities, and solely with the view to plunder, and is therefore excepted by Vattel and all the approved publicists from the principle under which redress is here sought to be derived, and brings it within the principle under which, by the practice of all civilized nations, the citizen or subject has been held entitled to indemnity, and under which this Government has uniformly extended redress. (Senate Report No. 244, first session Thirty-fourth Congress, vol. 2.)

These great principles of government have been recognized and passed into a compact between this Government and the citizen in the several "trade and intercourse laws" enacted by Congress in 1802, 1834, and 1859. Since then it has repeatedly, in the hundreds of private Acts for relief, recognized its obligations to pay the citizen out of the Treasury of the United States for losses sustained by Indian depredations. It has gone even further, and paid friendly Indians for losses sustained at the hands of hostiles of the same tribe, when they (the hostiles) failed to make restitution of the property stolen, as stipulated in the articles of capitulation.

The law of 1859 repealing the provisions of the Act of 1834, by which the United States guaranteed eventual indemnity for losses on account of Indian depredations, and which provided for the payment of such claims out of the Treasury, was an amendment to the Indian Appropriation Bill, and passed without much consideration and without debate. But the Act of 1870 provoked more discussion. In the Senate during the debate upon the bill, Mr. Thayer of Nebraska said:

Mr. Thayer. The honorable Senator from Iowa and the honorable Senator from Oregon say that in some cases the annuities of Indian tribes have been absorbed in meeting these claims. I tell those two Senators that the property, the all of settlers on the frontier has been destroyed by Indians; and I say to them also that the way to produce an effect upon the Indians is by letting them know that if they commit these depredations their annuities shall be taken to pay for them. That is the only way in which you will reach them. That is the only way in which you will have an effect on the Indians and compel them to cease their depredations on the settlers. The last remedy for a man whose property, whose crops, whose horses, and whose cattle have been taken from him by Indians is to tell him to come to Congress and wait until the day of doom before he can get satisfaction or compensation. I trust that this whole section will be stricken out.

Mr. Tipton said:

Every Senator here who knows anything about the new States knows that when a band of savages pass through our borders, or when the Indians who are on the reservations pass through our States, there is nothing that protects the property of the settler so well as a consciousness on the part of the chiefs and the head men of the Indians that if the stock of the settler is killed, if his crops are destroyed, their annuities may be reached and they will feel it in their pockets. Nothing so completely gives protection to the settler as that. Then, when their young men spread upon the prairies and roam about at will, when they come upon the cabin of a settler and his property is entirely in their power, they will have been warned by those in authority over them not to touch it or the value of the property will be taken out of their annuities. I tell you that gives us more protection when they pass through our inhabited counties and portions of our States than anything else you can devise. But let it be understood that if they commit depredations, those who complain of them, if they can make a case, may come to Congress and get their pay out of the Treasury of the United States, and who cares what depredations are then committed? I say that unless this section be stricken out, or so amended that the redress shall be direct upon the tribe or upon the annuities of the tribe, we shall have very little protection.

Mr. Williams said:

It is a mistaken policy, in my judgment, that undertakes to throw around these Indian tribes the protection of law in robbery, a thing which they will understand just as well as white men. It will not be long before the Indians will know that they can with impunity make inroads upon the white settlers and steal their horses and cattle, and carry them away and make use of them, and that there is no remedy for the white persons so injured.

In the House of Representatives Mr. Degener said:

I am not a lawyer, but common sense teaches me that if any person chooses to keep a dangerous animal on his premises, say a rattlesnake in his room, if he chooses to feed it, chooses to provide a warm blanket for that rattlesnake, so that it may not suffer from cold, and if he does not choose to extract the poisonous fangs of that animal, then he becomes responsible should that rattlesnake escape from his room and go upon the premises of his neighbor and there bite his neighbor, or his neighbor's wife, or his children, or his cattle. I believe that common sense teaches us that that is the correct principle.



Mr. Wilkinson said:

The principle is essentially just, and there is no reason for changing the existing law except the clamor which has arisen on account of the reputation that the Indian Department has had before the country. If the Indian Department stood as well before the country as the Treasury Department there is not a man in this House who would think of making the change proposed by this amendment.

Mr. Paine said:

On the other hand, it is desirable, if possible, to so regulate the payment of our annuities to the Indians that we may avoid the difficulties, the animosities, and the troubles that will be sure to grow out of the collection of false and fictitious and sham claims against the Indians. If there were an absolute certainty that only just claims would be presented against these Indians, if we were sure that only the claims of honest frontiersmen whose property had actually been destroyed or stolen would be presented and paid out of the moneys which would otherwise be devoted to the payment of these annuities, then I would have no hesitation in allowing the law to stand as it now is. But there is the danger that, by permitting the law to stand as it now is, we shall give encouragement to the prosecution of unjust claims. I believe everybody understands that it has been true that large numbers of outrageous claims have been presented against the Indians; demands made by men who set themselves deliberately to work to trump up claims upon no substantial foundation, for the purpose of robbing these Indians. On the whole, for the purpose of avoiding that difficulty, I am willing to encounter another.

And during the debate upon the Act of May 16, 1872, Mr. Harlan of Iowa said:

Under the amendment the Senate has agreed to, the last amendment preceding this offered by the honorable Senator from Nebraska, it will be the duty of the Secretary of the Interior to examine these claims and report them to Congress. Then Congress can make an appropriation to pay each claim that is specifically reported by the department. It seems to me that would be much safer than to order their payment out of the appropriations made to feed and clothe these Indians that are now being supported by the Government and have no other resource whatever, except preying on the frontier settlements.

From these debates it is apparent that it was not the intention of Congress by the Acts of 1859, 1870, and 1872 to repudiate its obligations to its citizens on account of these claims, but only to require that the same should not be paid without special appropriation by Congress for that purpose. The statement of Senator Thayer that the "last remedy for a man whose property, whose crops, whose horses, and whose cattle have been taken from him by the Indians is to tell him to come to Congress and wait until the day of doom before he can get satisfaction or compensation" was prophetic.

The discussion in the Senate of the amendment reported by the Committee on Appropriations, to strike out the provisions in the Indian Appropriation Bill of last session as it came from the House for the payment of certain depredation claims which had been presented to the Department of the Interior, audited, and reported to Congress, was, I think, the most extended discussion which ever took place in Congress upon the subject of the payment of such claims, and no Senator during that discussion ventured to question or deny the obligation of the Government to pay such claims, but all the Senators who took any considerable part in the debate expressed the opinion that such an obligation exists.

Mr. Plumb said:

While I say that, I am as earnest as any one can be in favor of the Government adopting a rule which shall result in the payment of what I regard as justly an obligation against the Government as any other one which it is called upon to respond to. There are millions of dollars, I believe, certainly many hundreds of thousands of dollars, which the Government of the United States owes to claimants all over the country. I have no doubt

the case of which the Senator from California speaks is one, to a certain extent at all events; possibly there may be some doubt about the amount; but in all these cases there ought to be a tribunal provided for the ascertainment of the amount due. I introduced a bill years ago, and have reintroduced it, to have an auditing of these claims in order that they might come before Congress not as objects of suspicion, but upon their true footing as genuine existing liabilities against the Government, and having had all the scrutiny that they ought to have preceding their allowance. The Committee on Appropriations, for the purpose of bringing about this result, seized upon an amendment offered to the bill in the House and so reframed it as they believe will result in establishing the validity or invalidity of these claims in such a way that they will not be subject to objection any longer.

Mr. Dawes said:

Instead of committing the United States to the payment of particular claims by paying fifteen per cent upon them and letting all this vast amount remain back waiting for that provision to go through, the Committee on Appropriations have proposed, on page 47 of this bill, this amendment, which I beg leave to read:

"For the investigation of certain Indian depredations claims, \$10,000; and in expending said sum the Secretary of the Interior shall cause a complete list of all claims heretofore filed in the Interior Department, and which have been approved in whole or in part, and now remain unpaid, and also all such claims as are pending, but not yet examined, on behalf of citizens of the United States on account of depredations committed, chargeable against any tribe of Indians by reason of any treaty between such tribe and the United States, including the name and address of the claimants, the date of the alleged depredations, by what tribe committed, the date of examination and approval, with a reference to the date and clause of the treaty creating the obligation for payment, to be made and presented to Congress at its next regular session; and the Secretary is authorized and empowered, before making such report, to cause such additional investigation to be made, and such further testimony to be taken, as he may deem necessary to enable him to determine the kind and value of all property damaged or destroyed by reason of the depredations aforesaid, and by what tribes such depredations were committed; and his report shall include his determination upon each claim, together with the names and residences of witnesses, and the testimony of each, and also what funds are now existing, or to be derived by reason of treaty or other obligation, out of which the same should be paid."

The Secretary of the Interior is required to pass upon these claims. He has passed upon them in the past in the manner which I have suggested. He has not had the money to send anybody into the Territories, where it has been alleged that these depredations have been made. He has the power, under the statute, but he has not had the money; he has had no men that he could pay for that purpose. Therefore, whenever a man sent his claim up here, or referred it to the agent of the tribe, when the agent of the tribe got the affidavit furnished by the claimant and sent them up here, without any hearing or cross-examination whatever, the Secretary of the Interior has written "approved;" and the claims come to Congress, thirty-one hundred of them in a single letter, amounting to more than a million and a half dollars, and a dozen of them were put upon a single page in this bill, by the other branch, with a stipulation that only fifteen per cent should be paid. Fifteen per cent of them would take twice as much as the very Indians upon whom they are charged have got in the Treasury; and we are called upon in this bill, independent of that, to appropriate some \$25,000 to support and feed these very Indians.

I submit that the safest way is the one proposed by the Committee on Appropriations, and that any other way is unsafe, unfair to other claimants, invidious, unjust, and groundless discrimination in favor of these claims.

Mr. Coke said:

I think, Mr. President, that a proper measure of justice to the claimants who have suffered from Indian depredations would suggest to the committee and to the Senate that the claims which have been investigated under Acts of Congress prescribing the mode and manner of their investigation, which are on file in the Interior Department, and have been reported to Congress by the Secretary of the Interior, approved by him as just and honest claims, should be embraced in this bill, and the appropriations made to pay them. The committee propose, by their amendment, that they shall be reinvestigated. Why reinvestigate claims which have already been fully investigated? We must presume that they have been fully investigated, because the Secretary of the Interior, the Commissioner of Indian Affairs, the agents and superintendents over the Indians, all had authority to make the investigations, to summon witnesses and take depositions, and upon their investigation, presumably correctly made, the Secretary of the Interior has reported a large number of these claims, belonging chiefly in Kansas, Colorado, and Texas, as just and approved by him.

The committee now propose to reinvestigate those claims after a lapse of from fifteen to twenty years, when all the testimony has gone, possibly when the facts upon which the claims are founded are necessarily obscured from loss of testimony and death of witnesses. There is no justice in such a course.

The people of the frontier States knew that they had no recourse against the Indians, except what Congress gave them, and Congress, in the Acts to which I have referred, prescribed certain methods which they have pursued. They submitted themselves fully to the jurisdiction prescribed; and now, after their claims have been approved by the tribunal appointed by Congress, their witnesses dead or scattered, they are to be called upon to again come forward and resubstantiate the same claims already adjudicated and on file in the Department and reported approved to Congress.

I know something about these claims for Indian depredations. I know that the frontier of Texas was at one time driven back seventy-five miles by hostile Indians from the Fort Sill reservation, where they were under the care and control, and management and protection of the Government of the United States. The people of Texas dared not go upon that reservation to retaliate. They could have gone there and wiped out the Indians, but the United States Government protected them. Whenever a full moon shone at night they came down upon Texas, drove off cattle and horses, burned houses, and killed and scalped men, and carried women and children into captivity.

I have no doubt that the same experience was realized by all the other frontier States. I have personal knowledge of the fact that, until the State of Texas organized a battalion of State troops and sent them to the frontier and protected the settlers against the Indians, the frontier was almost abandoned. I know hundreds and hundreds of men in Texas who had thousands of head of cattle and hundreds of head of horses, who lost every dollar's worth of property they had by the depredations of those Indians. Yet the Senator from Massachusetts would cast an imputation upon the justice of these claims, examined and approved as they have been.

As the Senate Committee on Appropriations determined that they would not appropriate the money now to pay these claims, that they would not put these claims thus approved and reported upon this bill, then I believe the next best thing for them to do was, as the committee has done, require a full report of all these claims to be made to Congress at the next session, and when this report comes in and we see what they all amount to, I shall favor, and I believe that the honor of the Government will require, that Congress shall take steps to liquidate them at once. I do not see why those who have honest claims for Indian depredations should be sneered at. They are the pioneers of the country. They have gone westward until we have no frontier left, blazing the way for settlement and civilization.

Mr. Manderson said:

Mr. President, I certainly quite agree with the suggestions made by the Senator from Texas, in regard to the duty of the Government to pay those who have suffered loss on the frontier of the country by reason of Indian depredations, and I wish to supplement his suggestion, as to the claims mentioned in this bill, in that part of the bill which has already been stricken out by the action of the committee, by reading from a report of the Committee on Claims. It was stated by the Senator from Tennessee [Mr. Jackson] that the claims presented in this bill had been reported adversely by the committee. That statement is truthful; but it does not tell all the truth. The inference might follow that these claims were rejected because of lack of merit, for fraud, or because the parties had not suffered the losses they pretended to have suffered; but that is not the finding of the committee. The Committee on Claims, following the action of the Interior Department, reports as to these claims, and I read from the report:

"The claimants are all citizens of Texas, generally engaged in agriculture or stock raising, quietly and peacefully pursuing their avocations, having nothing to do with trade or traffic with the Indians, and in no way connected with any disturbance between whites and Indians there or elsewhere. They were all citizens of the State of Texas, and while engaged in peaceful pursuits were set upon by bands of Indians (who were supposed to be under the restraint and control of the Government on their reservations), their stock stampeded and driven off, and other property destroyed or carried away, and in many cases their herders killed or wounded. They have, as the evidence shows, at all times refrained from any violation of law by taking the remedy into their own hands and giving blow for blow, but have, in compliance with the laws which Congress has, from time to time, passed for their protection and indemnity, made out their claims, supported them by ample proof, both as to quantity and value, and have presented them to the officers designated by the Government to examine into their justness and the truthfulness of their statements; and those officers, after having sent the claims to the agents of the different tribes to be presented to the Indians for their statements in regard to them, and after hearing the reports of those agents and making a careful examination of the proofs offered by the claimants, have allowed them the various sums, for payment of which the claimants now ask an appropriation by Congress."

So that these claims have not been allowed by the Department of the Interior upon mere *ex parte* affidavits, but upon full investigation and with a chance to the Indians themselves, through their agents, to be heard.

They are taken up in this report, and although the committee recognizes their merit and the obligation upon the Government to pay this class of claims, it does report adversely to them, as suggested by the Senator from Tennessee, in this language:

"As stated in your committee's report upon the claim of Overton and Love, there are a large number of these claims, equally meritorious, on file in the office of the Commissioner of Indian Affairs. No good reason can be given for paying the claims under consideration without paying them all. This committee cannot recommend the passage of such claims until Congress adopts some general policy of dealing with all these claims."

I admit that the suggestion of the committee is a wise one. All of these claims should be dealt with, but year after year rolls by and they are not paid. In my own State I know of existing claims, as valid and as meritorious as those that are stated in the report, that are nearly a quarter of a century old, for depredations committed by Indians upon frontiersmen who were invited by the Government to go upon Government land, and these men driven from their lands, their homes destroyed, and in frequent instances members of their families killed or treated worse by Indian depredators, remain with their serious losses yet unpaid.

I submit, Mr. President, that it is a crying shame that these claims have not been paid.

Mr. Maxey said:

Mr. President, the general plan for efficient and prompt settlement of outstanding claims proposed by the Committee on Appropriations I think is wise; but I submit to that committee and to the Senate whether there is any reason why, because they propose to adopt that plan, the claims which have been allowed by the House and which come to us as approved claims shall be stricken out of the bill. In other words, the law has always favored the vigilant. If gentlemen who have claims have gone to the labor and the expense of gathering up their testimony, of laying it before the Secretary of the Interior, of having their claims examined and approved and recommended to Congress, and Congress in its wisdom allows those claims and the bill comes to us with those claims thus allowed, I ask if there is any reason or propriety in striking out all the claims allowed, as found on pages 8, 9, 10, etc., of the bill which comes to us from the House, simply because a provision is made by the Appropriations Committee for a general settlement of all such claims? If the claims which are allowed are just in themselves, and the Senator in charge of this bill does not gainsay that proposition; if they are right why should they be struck out in order to take their place under the general plan of settlement when they have already been examined and approved and allowed by the proper committee of the House as just and proper claims? I can, therefore, see no reason why these claims shall be stricken out, nor do I see any conflict between the claims which are allowed by the House standing as a part of this bill and the proviso which is put in by the Appropriations Committee of the Senate in respect to those claims which are not as yet allowed or have not been sent up by the Secretary of the Interior.

Mr. President, it is to the interest of the Republic that there be an end of litigation, and if these men have had claims litigated and passed upon and they have been allowed by the House, why should they be stricken out of the bill by the Senate? It is not pretended that they are not just claims. If there was a shadow of suspicion cast on the claims there would be some reason in that, but there is none. They are admitted to be just, they are admitted to be right, but they are simply stricken out because they may conflict with the plan proposed for future settlements. These claims having been already settled, why should they be relegated to the future to be settled then? I cannot see any reason for that. It does not seem to me to be a fair proposition.

Mr. Miller of California said:

What I object to is this practice of the Government of the United States, which is unbecoming a great government, interposing technical objections to shilly-shally around and put off payment in the manner of a bankrupt debtor or a man who is not disposed to pay his debts. That is the position in which the Committee on Appropriations to-day are putting the Government of the United States in relation to the citizens who hold these claims. That there is an obligation to pay these claims out of the funds held in trust by the Government belonging to the Indians, there can be no doubt; but the Committee on Appropriations or the Chairman of the Committee on Indian Affairs who has charge of this bill seems to desire to put off the payment continually. It is so year after year. This process has been going on for a great many years, and when we are confronted by the condition of things then we invent some new scheme, some new plan by which these claims shall be put off; we have not got the report we want, or there is something lacking, and a man who has vigilantly prosecuted his claim and has had it adjudicated, and the amount found due shall not be paid because somebody who has not used the time diligently and whose claim has not been adjudicated is not paid, and that furnishes a reason why the man who has a just claim which has been adjudicated shall not be paid. That seems to me a strange position to take. I can not see why when a claim

is adjudicated and found to be due this great Government should desire to put off the day of payment, and to bring up technical and other objections to avoid the payment. \* \* \* We have said that these Indian disturbances were not wars, that Indians were not to be regarded as belligerents. They are wards of the nation. The Government of the United States has assumed to take care of them and to protect the frontier against them by placing them on reservations and under the control of the military; and they have thus invited people to go on the frontier, risk their lives, and risk their property.

The Government has invited them to do that and has placed agents over the Indians; but for all that they break out and they carry with them the torch; they burn, pillage, rob, destroy, murder, and carry into captivity; and when these unfortunate people come to Congress and ask for relief, because every man has not been prepared to bring forward his claim in the mode and manner which is required all others who have done so are to be relegated to some commission hereafter to be appointed to regulate these things. Sir, that is not just. Let "every tub stand upon its own bottom." If a man has an honest claim let it be brought forward, and if the claims amount to \$8,000,000, as the Senator from Wisconsin says, if they are just claims for depredations committed by these wards of the nation upon the defenseless frontier people in the destruction and robbery of their property, this Government, as an upright and honorable and honest gentlemen would do, ought to pay the last dollar of it if the Indians have not enough money of their own to pay that debt. I assume in the broadest form that position that it would be just and right and fair to do it.

Mr. Cockrell said:

It is a matter of absolute necessity that we shall sift these claims, that we shall ascertain those that are properly chargeable against the nations and tribes that have annuities and with whom we have treaty stipulations and whose money we have, so that we can pay the claims. Now, I am for making these Indians pay every solitary dollar due for the actual depredations committed by them, whenever they have any money or whenever they have any lands out of which they can be paid. I want to hold them responsible to the fullest extent of the law; but I only want to pay what is actually due, the real value of the property destroyed or the real injury done to it, and not mere imaginative damages that may have resulted, and which should never be allowed in any Court of justice. Therefore we put in the amendment, under the head of "Indian depredation claims," at page 47, requiring a thorough investigation of this whole matter. We appropriate \$10,000 for it. The Secretary can take this money and he can have a thorough investigation made; he can report to us all the facts; he can show us the evidence upon which these claims are allowed, and the treaties and the funds. Then we can go to work and settle the cases intelligently and honestly and fairly, but we can not do it until we have that information, and it is idle to undertake to do it. We are simply making fish of one and flesh of another. We are making a favorite of one, and we are doing great injustice and wrong to hundreds of others.

If it was not the intention of Congress that payment of these claims should be ultimately made by the United States the appropriation of \$10,000 at the last session of Congress for the purpose of having such claims investigated and reported upon by the Secretary of the Interior, was a waste of money and useless legislation. I have a right, therefore, to assume that the provision of the Act in question for the examination of such claims and requiring a report of those approved by the Secretary of the Interior to be transmitted to Congress, was for the purpose of providing a basis for an appropriation by Congress at a subsequent session for payment thereof. Congress should treat the report of the Secretary of the Interior as conclusive so far as the claims that are approved are concerned, and appropriate money for their payment. The bill presented by me to authorize suit in the Court of Claims would then be applicable to claims which have been heretofore disallowed by the Department, to claims which have been heretofore filed but have not been examined and reported, and to those which may hereafter be filed.

I think the Government is morally bound to pay the claims which have been proven under the laws and the rules and regulations prescribed by the Interior Department, approved by the Secretary of the Interior, and reported to Congress. I do not care, however, so much for the manner in which the object I have in view, which is, the payment of these claims, is accomplished as I do that some action shall be taken by Congress now,

without further delay, which will accomplish it. The inaction and indifference of Congress in this matter is a disgrace to the Government and an injustice to its citizens which should be no longer permitted.

It is because I suppose the bill offered by me to refer claims of this character hereafter to the Court of Claims will not be subject to some of the objections which have been heretofore urged against the payment of these claims, and may therefore find favor with the majority of both Houses of Congress, that I have offered it.

By reference to the first section of the bill it will be seen that it does not create a new class of claims against the United States. It provides a more satisfactory method for the examination and determination of a class of claims already recognized. As I have shown, claims for Indian depredations are now considered in the Interior Department upon *ex parte* affidavits, filed by the claimants, and upon such further information as the agents of the Department are able to gather. When examined in the Department they are reported to Congress, which, instead of treating the approval of the claims by the Secretary of the Interior as conclusive, and making an appropriation to pay them, either takes no action or delays final action, and postpones the day of settlement and payment by expedients like that adopted at the last session, when provision for the payment of certain claims was stricken out of the Indian appropriation bill by the Senate, and an appropriation of \$10,000 made for examination and report upon such claims by the Secretary of the Interior. The truth is that neither the Department of the Interior nor Congress is so situated as properly to examine claims of this character.

No greater objection has ever been urged to these claims than that the *ex parte* examination which they have hitherto undergone necessarily fails to separate the good from the bad, and indeed invites fraud. The provisions of the present bill answer any such objection.

In the Court of Claims the Government is represented by the Attorney-General through his assistants. All the machinery of the Department of Justice is at the disposal of the Government in securing evidence. No testimony can be taken *ex parte*, but under the rules governing the Court the Government is present by its counsel at the examination of all witnesses and can call witnesses in defense. The methods of procedure in that Court are simple, and there is no better way of securing an impartial and thorough examination and just decision of the claims for Indian depredations than by submitting them to it. The Court is able, as I will presently show, to dispose of a much larger amount of business than is now before it. Probably the passage of this bill would necessitate the appointment of additional counsel to represent the Government in cases brought under it, as the force of attorneys for the Government has not heretofore been large enough. With a slight addition in this respect, cases arising under this bill could be promptly considered and decided.

Propositions to refer claims of this class to commissioners are open to objections. It would be difficult to obtain commissioners of sufficient learning and experience who would accept temporary official positions and who would dispose of interests so important in a manner acceptable to the claimants and the Government. Commissioners would be obliged also to act as counsel for the United States as well as judges. It need not be said that these two positions are incompatible and that a judge so situated is hardly able to render an impartial decision. If this work were done by commissioners Congress would be overwhelmed by petitions of unsuccessful claimants for relief. This has been the past experience with commissioners and

special tribunals. Suitors against the Government should have the same right to trial in a judicial tribunal as other suitors.

The sixth and seventh sections of the bill are in harmony with the policy of the Government as expressed by the Act of 1834. It is provided that judgments shall be paid out of Indian annuities, if any exist. An examination of the Indian treaties shows that a large proportion of all the treaties ever made with the Indian tribes contain provisions that claims for depredations shall be paid out of the annuities due such tribes. The course of legislation shows that where annuities have existed this has been the uniform rule from 1796 to the present time. In the absence of treaties especially designating this course the obligation of the Indian tribe is equally strong. A tribe committing depredations cannot expect to receive trust funds from the Government while claims of its citizens arising out of their own misconduct are unpaid. The rights of the Indians are sacred, but no more sacred than the rights of innocent white citizens. The line must be drawn between justice and sentiment. The white man must be given justice as well as the Indian.

These principles are carried to their logical and proper extent by this bill by providing that, if there are no annuities and funds become due to the Indians from the sale of their lands, then they must pay out of such funds for their depredations, or out of any appropriations made for their benefit other than for their subsistence, support, and education. Should there be no funds in the hands of the Government due the Indians, it is provided by the bill that the judgment of the Court shall be paid out of the Treasury. This adopts the provisions upon this subject of the Act of 1834, which was only a reenactment of the provisions of the Acts of 1796, 1799, and 1802. The provision is only a discharge by the Government of its just obligations arising out of peculiar relations of the Government, the citizen, and the Indians.

When the Act of 1870 was passed directing that no claim should be paid out of annuities without the special authority of Congress, there were many annuities due to Indian tribes which have since been fully paid.

A reference to House Executive Document 5, Forty-first Congress, second session, page 182, shows that for the fiscal year ending June 30, 1870, \$4,167,486 36 was appropriated for fulfilling treaties with various Indian tribes. All this sum was, under the laws and treaties, subject to the payment of claims for depredations committed by the Indians to whom annuities were due. The Act of 1834 pledged the Government to such payments. But since then very few claims have been paid, while the annuities have been gradually exhausted with the lapse of years, until the Secretary of the Treasury reports in 1884 that the sum of \$1,420,150 only is necessary to carry out treaty stipulations for the year ending June 30, 1886.

The guarantor trustee has paid out the funds without regard to its own obligations as guarantor, and must answer from its own estate.

Congress has at almost every session passed some bill for the payment of Indian depredation claims, and at every session claims as meritorious as those passed are presented and ignored. The passage of this bill would at once relieve Congress from further consideration of this class of claims. It would remove the objection made to their payment that they are exaggerated and have not been established with sufficient certainty to justify appropriations, and provide the most satisfactory way of ascertaining the amount of loss sustained by each claimant. While it would entail some expense upon the claimants, they would, I believe, gladly accept its provisions and be satisfied with the final adjustment of their claims under it.

The present system of auditing claims of the character under consideration is a delusion; it has outlived the purpose for which it was instituted; appropriations no longer follow as a matter of course, either for the payment of these claims, as audited, out of the Treasury, or from annuities due the Indians chargeable with the depredations.

I have considered the question of the ability of the Court of Claims to dispose of the additional business which would be imposed upon it by this bill should it become a law, and find that it will be able without any additional clerical or other force to dispose of such business. The expense of examining these claims under this bill would be no greater than the expense now caused by the examination of them by the Interior Department. In answer to a letter addressed by me to Hon. William A. Richardson, Chief Justice of the Court of Claims, I received the following:

COURT OF CLAIMS CHAMBERS,  
WASHINGTON, February 23, 1886. }

MY DEAR SIR: I have the honor to acknowledge the receipt of your letter of the nineteenth instant, with a copy of Senate bill No. 1407, "in relation to Indian depredations."

You say that you "have been informed that the impression is prevalent, to some extent, that the Court of Claims would be unable to dispose of any considerable addition to the business now before it," and you ask me to inform you whether it would be possible for the Court to dispose promptly of cases which might arise under this bill should it become a law, and whether any changes in existing law would be necessary to enable the Court to determine the causes which might go before it, should the bill be passed by Congress.

The impression to which you refer is an erroneous one. Although the business of the Court has been largely increased of late, no difficulty has been or is likely to be found in disposing of it as fast as the parties are ready for trial.

Of course the judges are required to work somewhat harder, but of that they do not complain. They always hold themselves in readiness cheerfully and promptly to do whatever business Congress sees fit to put upon them.

When the Bowman bill, which became the "Act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government" (22 Statutes at Large, 485), was before a committee of Congress, the judges made reply to a similar request as follows:

"The business of the Court has frequently been increased by special matters of jurisdiction referred to it by Congress, such as the abandoned and captured property cases, under the Act of March 12, 1863; cases against the District of Columbia, under the Act of June 16, 1880; and numerous cases and classes of cases referred by private Acts. It is found that such cases bring in new litigants and new counsel, who prepare and submit their cases while others are in preparation and do not obstruct the general business. Litigants are always promptly heard whenever their cases are ready for submission, and the Court promptly decides them, and the business has never been in arrears; so that the extent of business which the Court may transact can hardly be estimated."

Further experience with the business of that Act before the Court, has confirmed the views there expressed.

I have no doubt that the Court, with no additional assistance, would be able to do promptly all the business that would come to it, if the present bill becomes a law.

I send herewith a copy of the History, Jurisdiction, and Practice of the Court of Claims, from which you will get a full account of the business of the Court.

I am, very truly, yours, etc.,

WILLIAM A. RICHARDSON,  
Chief Justice.

Hon. J. N. Dolph, Senator, etc.

I also addressed a letter to the honorable Commissioner of Indian Affairs, to ascertain the number of depredation claims and their aggregate amount, and received the following reply:

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS, }  
WASHINGTON, D. C., March 3, 1886. }

SIR: In reply to your interrogatories relative to number, amount, etc., of Indian depredation claims pending in this office, I have the honor to inform you that with the forces employed and the amount of other duties devolving upon them, it has been impossible to collect the full and exact data you desire; such facts, however, as the office has been able to collect, and which are believed to be approximately correct, are given.

There are about forty-five hundred claims on file on account of Indian depredations, dating from 1850 to the present time, and they aggregate in amount \$13,000,000. Prior to

the Act of July 15, 1870 (see Revised Statutes, Section 2098), claims against Indians for depredations were paid by United States Indian agents. As to what amount was thus paid the office has not been able to ascertain. By an examination of the Statutes at Large, beginning with the Act of March 3, 1819 (3 Statutes, page 517), and coming down to the Act of March 3, 1885 (23 Statutes, 498), it will be seen that Congress has appropriated, by special Acts in payment of claims, about the sum of \$1,654,530.

As to what amount of claims has been allowed by and what amount has been rejected by the Commissioner of Indian Affairs or the Secretary of the Interior heretofore, can not be ascertained within the time desired by you, if in fact it could be ascertained at all in a satisfactory manner, as in many instances the same claim has been disallowed by one Secretary of the Interior and allowed by his successor.

Very respectfully,

J. D. C. ATKINS, Commissioner.

Hon. J. N. Dolph, United States Senate.

It will be seen that the number of these claims which have been heretofore filed is about forty-five hundred, and the total amount claimed about \$13,000,000. Experience justifies the expectation that when these claims are required to undergo investigation in a Court, and to be presented in accordance with the rule of pleading and established by evidence taken in such manner as to allow the cross-examination of witnesses, many of them will never be presented; and of those which are presented, when the claims without merit are winnowed out of the whole, their number and amount will be greatly reduced. I do not believe that the total amount of claims which would be allowed under this bill, should the whole thirteen millions be presented, would exceed \$5,000,000. To show the probability of a large reduction in the amount of these claims, if submitted to the Court of Claims under the provisions of this bill, I submit the following statement:

CLAIMS PRESENTED, ALLOWED, AND DISALLOWED IN VARIOUS CLAIMS TRIBUNALS, SHOWING THE PROPORTIONS OF CLAIMS TO ALLOWANCES.

I.

Southern Claims Commission, under Act of March 3, 1871 (16 Stat. L., 524):

Amount claimed .....	\$60,258,150 44
Amount allowed .....	4,636,920 69
Amount rejected .....	55,621,229 75

(See House Miscellaneous Document No. 30, Forty-sixth Congress, second session.)

II.

Court of Claims in cases decided from December term, 1867, to December term, 1880:

Amount claimed .....	\$80,315,529 20
Amount allowed .....	19,770,540 98
Amount rejected .....	60,544,988 22

(See seventeenth volume Court of Claims Reports, page 11.)

III.

Claims Commission under convention with Great Britain of February, 1853 (10 Stat. L., 988):

Amount claimed, "millions."	
Amount allowed, about .....	\$600,000 00

(See message of the President communicating the proceedings, printed by the Senate Printer, 1858, page 4.)

IV.

Claims Commission under convention with Mexico of July 4, 1868 (15 Stat. L., 679):

Amount of claims against the United States .....	\$86,661,981 15
Amount allowed in claims against the United States .....	150,498 41
Amount rejected in claims against the United States .....	86,511,392 74
Amount of claims against Mexico .....	470,126,613 40
Amount allowed in claims against Mexico .....	4,125,622 20
Amount rejected in claims against Mexico .....	466,000,991 20

(See Senate Executive Document No. 31, Forty-fourth Congress, second session.)

V.

Claims Commission under convention with France of January 15, 1880 (21 Stat. L., 673):

Amount of claims against the United States .....	\$17,368,151 27
Amount allowed in claims against the United States .....	625,566 35
Amount rejected in claims against the United States .....	16,742,584 92
Amount of claims against France .....	2,427,544 91
Amount allowed in claims against France, 13,659 francs 14 cent., or about ..	2,732 00
Amount rejected in claims against France .....	2,424,812 91

(See House Executive Document No. 235, Forty-eighth Congress, second session, pages 191, 193.)

VI.

Claims under the Act of July 4, 1864, filed in the office of the Quartermaster-General:

Amount claimed .....	\$41,107,266 48
Amount reported to the Third Auditor under the second section of said Act with recommendation for settlement up to March 6, 1886 .....	5,750,119 71
Amount rejected .....	29,083,554 16
Amount of claims pending at said date .....	6,273,592 61

VII.

Claims filed in the office of the Commissary-General up to March 10, 1886:

Amount claimed .....	\$4,944,111 14
Amount recommended to the Third Auditor of the Treasury for settlement under said Act to said date .....	429,533 47
Amount rejected .....	4,509,704 17
Amount of claims now pending .....	4,873 50

The bill under consideration is designed to provide a tribunal, open to the citizens of all the States and Territories, authorized to hear and determine their claims according to the law and the facts. It is a measure demanded by every principle of justice and good faith on the part of the Government.

The people of Oregon, Washington, and Idaho, in my judgment, have an exceptional claim upon the Government for indemnification for losses occasioned by Indian depredations, growing out of the causes which led to the settlement and occupation of the Oregon Territory by American citizens, the inducements held out by the Government to settlers in that Territory, and the causes which led to Indian hostilities there.

It is well known that the title to the territory which comprised what is now Oregon, Washington, and Idaho, lying west of the Rocky Mountains, and north of latitude 42° north, was for a long time in dispute. It was claimed at different times by Russia, Spain, Great Britain, and the United States. Russia's claim rested on occupation by fur traders, and its southern boundary was undefined. She had established a fur trading post in Northern California at an early day.

By a treaty ratified by the United States in 1825, the line between the territory claimed by the United States and that claimed by Russia was fixed at 54° 40' north latitude. Great Britain, claiming the territory south of that line, made haste to negotiate a similar treaty, defining 54° 40' north latitude as her northern boundary.

The claim of Spain to this country rested upon alleged discovery backed by occupation. Spain transferred her interests to France, and in 1803 Napoleon sold Louisiana to the United States, and by the Florida purchase latitude 42° north was fixed as the boundary between Spain and the United States on the Pacific coast, and thereafter the controversy concerning the title to the territory was between the United States and Great Britain. The claim of Great Britain to the country by discovery was indefensible, but as early as 1793 English fur traders, in private employ, pushed into



the Oregon country and established trading posts there, but made no attempts at permanent settlement south of 49° north latitude.

The claim of the United States rested upon the doubtful claim acquired from Spain, the voyage of Capt. Robt. Gray, of Boston, who in 1792 entered and explored to some distance from its mouth the River Saint Roque, the name of which he changed to Columbia, the name of his ship, and the exploration of Lewis and Clarke, who, under orders from President Jefferson, crossed the continent, floated down the Columbia, wintered at Young's River, near the mouth of the Columbia, and explored much of the Oregon country.

The treaty with Russia fixing, as against the Russian claim to the territory, latitude 54° 40' north as the northern boundary of the possessions of the United States, created in the United States a belief that was our true boundary as against Great Britain, and the Oregon boundary was for many years an absorbing question in the politics of the country. It formed the subject of political platforms and political campaigns; it threatened to involve us in a war with Great Britain; the Monroe doctrine was invoked against allowing Great Britain's claim to any part of the Pacific Coast. It became apparent to the people of the United States and to the Government that the question of title would be eventually determined by actual occupation. By the Convention of August 6, 1827, the joint occupation of the Oregon country by the United States and Great Britain was continued indefinitely, with a provision that either party might annul and abrogate it upon giving twelve months' notice to the other, and from that time forward until the Northwestern boundary was finally settled by the treaty of 1846, occupation became an important factor in determining the question of title. The condition of the western half of North America at the time Captain Gray discovered and explored the Columbia River is thus graphically described in an article published in the *Daily Morning Oregonian* of Portland, January 1, 1886:

With the anniversary of another century, in the year 1792, exactly three hundred years after Columbus discovered the New World, and two hundred and fifty years after the first Spanish navigator sailed up the west shore of Oregon, an American shipmaster discovered the great river of the west.

Up to that time the western half of North America was so unknown that from the Gulf of California to the icy pole there was scarce a trace of civilization. That little was where Jesuit missions to the far south were striving to bring up from untold ages of vice and degradation the miserable native hordes that peopled the choicest regions of the West. These efforts were only then commenced. If one could have stood on the great divide from whence the melting snows turn westward, the view would have been unbroken by one single touch of enterprise, with not a trace of civilization to mar the perfection of its savagery. The Indian with bow and arrow followed the chase, or with spear and net sought a food supply from the waters. And somewhere, on that vast expanse of wilderness, hostile bands were always on the warpath. The warwhoop and the savage yell waked many a scene of night, and flames of torture blazed to mark each victory. The Indian of this far West may have heard some rumor of the white man's coming, but on all the hills and plains and through all the mountain wastes, from Athabasca's snows to California's perennial summer times, the native tribes were, as their fathers had been before them, barbarian and savage beyond recall.

How great the change that time has wrought! Immigration has swept across the continent; civilization has taken the place of barbarism, the arts of peace of perpetual warfare; the then wilderness has become the home of millions of intelligent, law abiding, and liberty loving, industrious, and prosperous citizens, and the native hordes which then roamed over that vast territory are confined upon reservations and are kept under Government control. This change has not taken place, and in the nature of things could not take place, entirely peacefully. The conflict between civilization and savage life is irrepressible. It needs no prophet to foretell

that one or the other must prevail. Civilization or extermination is the fate of the remnant of the Indians.

The occupation of the territory was favored by the Government. As we have seen, peaceful occupation by American citizens was provided for in the treaty with Great Britain; Government expeditions were sent to explore the country; Government protection was afforded to immigrants crossing the plains; the patriotism of the people was appealed to, and to induce immigration to aid the settlement of the country Congress passed an Act, approved September 27, 1850, commonly known as the donation law, granting to every settler upon the public lands who was such prior to September 1, 1850, a donation of the quantity of a half section, or three hundred and twenty acres of land, if a single man, and if married, the quantity of an entire section, or six hundred and forty acres, one half to the husband and the other half to the wife in her own right, and to such as should become settlers between September 1, 1850, and December 1, 1855, the quantity of a quarter section to a single man, and, if married, a half section, one half to the husband and the other half to the wife in her own right.

Prior to 1830 several unsuccessful attempts were made by American fur companies to establish and maintain posts in the Territory, but they failed on account of the opposition and rivalry of established British companies. Immigration began in 1832, and after 1838 each year there were large additions to the permanent settlements of the country by companies of enterprising persons, who had braved the perils and endured the hardships of the long and tedious journey across the continent to establish homes for themselves and hold the country for the United States.

The increasing American immigration added to the perils of joint occupation, and it is firmly believed by many that some of the Indian massacres and depredations were incited by those unfriendly to American occupation of the Territory. While it was the policy of Congress to induce the settlement of Oregon by the whites, and to continue the joint occupation until the United States should be able, with the aid of the American population of the Territory, to assert and maintain an exclusive right to it, the settlers were from the first left without adequate protection by the Government. The pioneer population of the region suffered greatly at first from the inability of the Government to afford them protection, and afterward from its indifference and inaction. From the commencement of American immigration for the purpose of permanent occupation, and from the time it became apparent that Great Britain could not compete with the United States in the settlement of the country, Indian massacres of emigrants commenced. In 1834, on the Umpqua River, a party of thirty white persons were treacherously and brutally murdered. This was followed by the massacre of Dr. Whitman and his twenty-seven companions, near Walla Walla, by the Cayuse and Walla Wallas in 1847. These outbreaks were followed by murders of immigrants by bands of Modocs in 1852, by the Southern Oregon Indian war in 1853, the Rogue River and Jacksonville wars in 1855 and 1856, raids of marauding bands of Snakes in Eastern Oregon in 1858-59, the marauding massacres, murders, and thefts by the Snakes in Eastern Oregon and Washington in 1865-70, the Modoc outbreak in 1872-73, and the Nez Percé war of 1878.

In 1858 a committee was appointed by the Legislative Assembly of the Territory of Oregon and directed to examine and report in regard to depredations upon immigrants in 1854, the number and dates, places, and names of persons killed by Oregon Indians in time of peace, and those killed in time of war by Indians supposed to be friendly. The committee made a



report February 3, 1858, giving the names and dates of persons killed and names of the tribes doing the killing. The following is taken from the concluding portion of the report:

It will be seen by the foregoing list that prior to 1851 upward of fifty citizens were murdered by Oregon Indians. Since 1851 upward of one hundred and fifty citizens have been murdered by the Indians of Southern Oregon and their immediate allies, and about fifty by the Indians of Northern Oregon and their allies. Many more names could be obtained from papers and living witnesses, but your committee have not time to investigate any further.

Recapitulation: Killed in 1834, 30; in 1835, 4; in 1846, 1; in 1847, 16; in 1850, 8; in 1851, 12; in 1852, 50; in 1853, 11; in 1854, 29; in 1855, 51; in 1856, 45; in 1857, 5. Total, 262.

Isolated from civilization, neglected by the General Government, surrounded by savage foes, the pioneers of Oregon demonstrated to a remarkable degree the self-reliance, the undaunted courage, endurance, and capacity for self-government of the American people. It is for these brave men who penetrated the wilderness, took possession of the Oregon Territory and planted civilization there; who defended their hearthstones against savage foes incited by the emissaries of foreign powers; who laid the foundation of prosperous States and Territories that are, and the powerful and wealthy States that are to be, and for the widows and orphans of those who lost their lives by the neglect of the Government, that I plead to-day. I demand for them the same treatment accorded to all the citizens of the Republic for a period of over sixty years from the organization of the Government. The time will come when this demand will be heeded and provision will be made for determining the amounts of their losses by Indian depredations, and for the payment of their claims. How much better it would be to make such provision now, while the evidence can be found to sift the false from the true, and while the money will be available to relieve the necessities of the original claimants.

If the committee favors the payment of these claims, and the bill offered by me does not provide the best means for ascertaining the amounts thereof, let them devise a better plan and speedily present it to the Senate. If it is proposed to repudiate all liability on the part of the Government for damages for such losses, I hope, nevertheless, a report will speedily be made that the opinion of the Senate may be taken on the question. The present condition of these claims is very unsatisfactory. An occasional bill for relief is passed; other claimants do not understand why the Government should make a distinction between its citizens. They press their claims upon members of Congress at each session; bills are introduced for their relief; Congress takes no action; and the same thing is repeated at the next session. If an obligation on the part of the Government to pay these claims exists, a great injustice is being done to the claimants by the inaction of Congress. If there is, in the opinion of Congress, no obligation to pay them, and no intention of paying them, let us say so, and not evade the question longer. But, sir, as I have said, the obligation exists. The people whose cause I present to-day do not come as suppliants for the bounty of the Government, but as suitors for what, by every principle of justice, is theirs.

I do not beg, I demand for them what the Government justly owes them. I charge Congress with the virtual repudiation of an obligation of the Government as sacred as its obligation to pay its outstanding bonds. I charge it with having repudiated this obligation at a time and under circumstances which make a most unjust discrimination against the people of the far West, under circumstances which have the appearance of selfishness upon the part of the majority of Congress, and indifference to its obligation to

the brave and loyal men, by whose enterprise and energy civilization has been extended over the western slope of the continent. Their demand may not be granted; my feeble presentation of their claims may not even disturb the Committee on Indian Affairs in the even tenor of their way. The bill under consideration may be consigned, with the others introduced by me, which have preceded it, to the files of the committee, to sleep the sleep of death; but I have done my duty in presenting the cause of as meritorious a class of claimants as ever sought relief from Congress. They will never understand why the Government so suddenly changed its policy, and why their claims have been repudiated. They will not cease to demand from Congress what they conceive to be their due; and if their claims shall be now ignored and relief denied them, let no one imagine that they will cease from troubling Congress. The claims are just. If not paid before, after the present claimants shall have passed from the stage of action, and the claims are represented by their children, and grandchildren, and when the Territories of the West have been admitted to the Union and are represented in both houses of Congress, their united strength, backed by the uniform practice of the Government for so many years, and the justice of these claims, will succeed in accomplishing what, from their numerical weakness, the delegation in Congress from the remote West is unable to accomplish to-day.

Mr. President, I now submit as a part of my remarks a list of special appropriations for payment of Indian depredation claims, as follows:

#### SPECIAL LEGISLATION.—APPROPRIATIONS FOR INDIAN DEPREDAATION CLAIMS.

The following is a list of special appropriations for payment of Indian depredation claims. In each case it is stated whether payment is to be made from the Treasury or from the Indian annuities. The total of amounts appropriated from the Treasury is \$1,604,028 25; the total appropriated from Indian annuities is \$197,716 37. But these totals do not embrace the sums appropriated from the Treasury by several Acts (March 2, 1827; May 31, 1830; June 30, 1834), in which the amounts are not specified.

By Act of March 3, 1819 (Section 5, 3 Statutes, 517), \$4,000 is appropriated from the Treasury to satisfy claims of citizens of the United States for property stolen or destroyed by the Osages.

By Act of March 2, 1827 (6 Statutes, 361), William Morrison, late contractor for supplies to the Army, is allowed credit (out of the Treasury) for sixty-nine beef cattle taken from near the military post of Prairie Du Chien, in July, 1816, by certain predatory tribes of Indians.

By Act of March 25, 1830 (6 Statutes, 408), the Secretary of War is directed to pay \$6,703 from the Treasury to four persons for property taken by the Osage Indians from 1816 to 1823.

By Act of May 31, 1830 (4 Statutes, 428), certain depredation claims are referred to the Third Auditor to be decided according to the provisions of Section 14 of the Act of March 30, 1802, the money to be paid out of the Treasury.

By Act of March 2, 1831 (4 Statutes, 470), \$1,300 is appropriated from the Treasury for payment of sundry claims for Indian depredations.

By Act of June 28, 1834 (4 Statutes, 705), \$7,800 is appropriated from the Treasury to defray the expense of investigating claims against the Seminoles for property stolen or destroyed by them and for liquidating such as may be satisfactorily established.

By Act of June 30, 1834 (4 Statutes, 721), payment not exceeding \$250,000 is granted out of the Treasury to citizens of Georgia for claims founded upon the capture and detention or destruction of property by Creek Indians prior to the Act of March 30, 1802.

By Act of June 30, 1834 (6 Statutes, 581), certain claims for Indian depredations are referred to the Secretary of War, who is directed to pay out of the Treasury all which shall be established.

By Act of July 1, 1836 (6 Statutes 659), \$403 is appropriated from the Treasury to James Alexander, and \$575 to Ira Nash, for losses sustained and depredations committed by Sac and Fox Indians in 1814.

By Act of July 2, 1836 (6 Statutes, 671), the Secretary of War is directed to pay to Joseph Bogy \$6,000 from the Indian annuities for his merchandise and property taken or destroyed by the Choctaw Indians in 1807.

By Act of March 3, 1837 (5 Statutes, 158-162), the President is directed to report to Congress as to depredations committed by the Seminoles and Creeks, before and after the recent Indian war.

By Act of March 3, 1841 (6 Statutes, 822), the Secretary of the Treasury is directed to pay out of the Treasury, to Avery, Saltmarsh & Co., mail contractors, \$9,779 for property employed by them in transporting the mail, captured and destroyed by the Creek Indians in May, 1836.

By Act of June 15, 1844 (6 Statutes, 913), the Secretary of War is directed to pay to George Wallis \$3,000 out of the Indian annuities, for the destruction of cattle belonging to the said Wallis, by the Sac and Fox and Iowa Indians.

By Act of August 9, 1846 (9 Statutes, 24 Private), \$1,500 is appropriated from the Indian annuities to pay to the legal representatives of Cyrus Turner for depredations committed by Sioux Indians.

By Act of March 2, 1847 (9 Statutes, 41 Private), \$1,081 is appropriated from the Treasury to pay Elijah White and others for property taken by the Pawnee Indians.

By Act of March 3, 1847 (9 Statutes, 41 Private), \$676 91 is appropriated from the Treasury to pay Joseph E. Primeau and Thomas J. Chapman for depredations committed by Yankton Indians.

By Act of August 14, 1848 (9 Statutes, 90 Private), \$800 is appropriated from the Treasury to pay Charles N. Gibson for a wagon captured and destroyed by the Seminole Indians in Middle Florida in February, 1839.

By Act of March 3, 1849 (9 Statutes, 141 Private), \$4,155 is appropriated from the Treasury to pay Thomas Talbot and others for property taken by the Pawnee Indians.

By Act of August 30, 1852 (10 Statutes, 41, 55), \$1,200 is appropriated from the Treasury to pay James M. Marsh for losses for property taken by the Sioux Indians while extending the line of surveys under contract.

By Act of January 13, 1855 (10 Statutes, 843), \$500 is appropriated from the Treasury to pay Moses D. Hogan for cattle taken by the Indians.

By Act of August 18, 1856 (11 Statutes, 65, 81), the Secretary of the Interior is ordered to investigate claims for depredations by Indians in New Mexico.

By Act of March 16, 1858 (11 Statutes, 527, the sum of \$200, with interest from the first day of June, 1852, was appropriated from the Treasury to pay John Hamilton, of Champaign County, Ohio, for his time and services during his imprisonment with the Indians in the war of 1812 with Great Britain.

By Act of June 19, 1860 (12 Statutes, 44, 58), \$16,679 74 is appropriated from the Treasury to pay for the loss and destruction of property of citizens of Minnesota and Iowa at Spirit Lake in 1857, by Sioux Indians.

By Act of March 2, 1861 (12 Statutes, 203), \$9,640 74 is appropriated from the Treasury to indemnify citizens of Iowa and Minnesota for destruction of property at or near Spirit Lake by Inkpadutah's band of Sioux Indians.

By Act of February 16, 1863 (12 Statutes, 652, 658), provision is made for payment out of their forfeited annuities for damages done by Sioux Indians in Minnesota on the occasion of the Sioux massacre in 1862.

By Act of May 28, 1864 (13 Statutes, 92), \$928,411 is appropriated from the Treasury to pay the awards of the commission under the act of February 16, 1863, for damages done by the Sioux Indians in 1862, and a further sum of \$241,963 is appropriated for additional claims.

By Act of June 29, 1866 (14 Statutes, 609), \$28,175 is appropriated from the Treasury for Elizabeth Woodward and George Chorpenning for destruction of property by Indians in 1862, and by the second section of the same Act \$26,370 is appropriated from the Indian annuities to pay George Chorpenning for property destroyed by Indians prior to April 1, 1856.

By Act of March 2, 1868 (15 Statutes, 356), \$400 is appropriated from the Treasury to the widow of Maj. Gen. I. B. Richardson for one mule and four horses stolen from him by Apache Indians while on military duty in New Mexico.

By Act of April 10, 1869 (16 Statutes, 13, 39), \$10,906 34 is appropriated from the Treasury to pay for depredations committed by Indians in Northwestern Iowa, in 1857.

By Act of February 27, 1871 (16 Statutes, 704), \$2,564 10 is appropriated out of any money appropriated for the benefit of the Cheyenne and Arapaho Indians, to Lucy A. Smith, for losses by depredations of said Indians in Nebraska.

By Act of May 7, 1872 (17 Statutes, 395), commissioners are appointed to examine into depredations committed by Indians and Mexicans in Texas.

By Act of May 21, 1872 (17 Statutes, 661), \$14,650 is appropriated from the Treasury to indemnify Charles F. Tracy for depredations committed by Apaches in May, 1870.

By Act of June 5, 1872 (17 Statutes, 675), \$10,000 is appropriated from the Treasury to pay Mrs. Fanny Kelly for property taken and destroyed by Sioux Indians in 1864.

By Act of June 10, 1872 (17 Statutes, 690), \$30,000 is appropriated from the Treasury to pay the heirs of Alexander Watson for property lost, captured, or destroyed in Florida during the Indian hostilities commencing in 1835.

By Act of June 10, 1872 (17 Statutes, 701), \$13,200 is appropriated from the Treasury to Elbridge Gerry for valuable services rendered the Government in 1864, and for all claims for Indian depredations up to the date of the passage of this Act.

By Act of March 3, 1873 (17 Statutes, 766), \$2,250 is appropriated from the Treasury to Mrs. Ann Marble, administratrix, for losses by depredations by Cheyenne Indians.

By Act of April 28, 1874 (18 Statutes, 543), \$1,095 37 is appropriated from the Treasury to pay Mrs. Siloma Deck for losses by depredations by Sioux Indians in 1862.

By Act of March 3, 1875 (18 Statutes, 424), \$2,500 each is appropriated to Adelaide German and Julia German, two white children captured in Kansas, the same to be withheld from annuities due the Cheyennes.

By Act of March 3, 1877 (19 Statutes, 549), \$2,283 92 is appropriated from the Treasury to pay Hans C. Peterson for damages by Sioux Indians in Minnesota in 1862.

By Act of March 3, 1879 (20 Statutes, 396), \$2,915 with interest at 7 per cent is appropriated from any treaty funds of the Kiowa Indians, to the heirs of Abel S. Lee for property taken and destroyed by the Kiowa Indians in 1872.

By Act of March 3, 1879 (20 Statutes, 390), \$5,000 is appropriated out of any money hereafter appropriated for the use and benefit of the Cheyenne Indians, to Mrs. Celia C. Short.

By Act of June 8, 1880 (21 Statutes, 549), \$15,867 50 is appropriated to pay Henry Warren for damages sustained by depredations of Indians in 1871, while Warren was a Government contractor, the same to be withheld from the annuities due the Indians.

By Act of June 16, 1880 (21 Statutes, 588), \$2,000 is appropriated from the annuities due the Cheyenne or Arapaho Indians to Amanda M. Cook, whose mother was killed and herself captured by the Indians in 1865.

By Act of March 3, 1881 (21 Statutes, 640), \$58,659 46 is appropriated from the Treasury to pay Dodd, Brown & Co., assignees of E. M. Durfee & Co., and others, for depredations committed by various tribes of Indians, the amounts to be deducted from the annuities.

By Act of May 17, 1882 (22 Statutes, 86), \$9,870 10 is appropriated from unexpended balances of treaty funds to pay various claimants for damages caused by raids of Northern Cheyennes.

By Act of March 3, 1883 (22 Statutes, 804), \$12,200 is appropriated from moneys due the Cheyenne and Arapaho Indians to Powers & Newman, and D. and B. Powers for depredations committed by these Indians.

By Act of March 20, 1884 (23 Statutes, 525), \$5,400 is appropriated from the Treasury to pay Louisa Boddy for depredations committed by the Modoc Indians.

By Act of March 3, 1885 (23 Statutes, 498), \$46,770 21 is appropriated to pay W. C. Oburn out of annuities for depredations committed by the Cheyenne and Arapaho Indians.

LIST OF ALL TREATIES BY WHICH THE INDIANS AGREE TO ALLOW PAYMENT OF CLAIMS AGAINST THEM, OUT OF THEIR ANNUITIES, FOR DEPREDACTIONS COMMITTED ON THE PROPERTY OF WHITE MEN.

[The references by pages are to the "Revision of Indian Treaties," 1873.]

TRIBES.	Date.	Article.	Page.
Blackfeet	April 25, 1856	11	10
Calapooias	April 10, 1855	6	22
Chastas	April 10, 1855	8	25
Cherokees	January 21, 1795	4	32
Cherokees	October 2, 1798	9	35
Cheyennes and Arapahoes	August 19, 1868	1	130
North Cheyennes and North Arapahoes	August 25, 1868	1	136
Chippewas (see note <i>a</i> below)	May 5, 1864	4	255
Comanches and Wichitas	May 19, 1836	3, 5	304, 305
Comanches, Kiowas, Apaches	February 12, 1854	4, 108	310, 311
Comanches, Kiowas	August 25, 1868	1	319
Crows	July 25, 1868	1	328
Dwamish and Squamish	April 11, 1859	9	381
Flatheads	April 18, 1859	8	388, 389
Kansas (see note <i>b</i> below)	December 30, 1825	7	412
Kansas	December 30, 1825	10	413
Kiowas, Katakas, etc.	February 21, 1838	3, 5, 7	456, 457
Makahs	April 18, 1859	9	463, 464
Navajos	August 12, 1818	1	528
Nes Percés	April 29, 1859	8	537, 538
Nisquallies, Puyallups	March 3, 1855	8	563
Omahas	June 21, 1854	10	567, 568
Osages (see note <i>c</i> below)	January 7, 1819	1, 2	575, 576
Osages (see note <i>d</i> below)	December 30, 1825	9	580
Osages (see note <i>e</i> below)	March 2, 1839	6	584
Oregon, Middle	April 19, 1859	7	627
Otoes and Missourias	June 21, 1854	9	640
Pawnees	May 26, 1858	5	653
Poncas	April 11, 1859	7	664
Quapaws	July 15, 1818	6	717, 718
Quinaltels, etc.	April 11, 1859	8	725, 726
Sacs and Foxes	February 12, 1823	5	738, 739
S'Klallams	April 29, 1859	9	803
Snakes	July 10, 1866	4	805
Sioux, Yanktons	February 26, 1859	11	861
Sioux, Mendawakanton, Wahpakosta	March 31, 1859	6	88, 89
Sioux, Sisseton, Wahpeton	March 31, 1859	6	907
Sioux, Brulé, Ogallalla	February 24, 1869	1	914, 915
Shoshones, Eastern and Bannacks	February 24, 1869	1	932
Utahs	December 14, 1864	6	972
Umpquas and Calapooias	March 30, 1855	8	980, 981
Utes	November 6, 1868	6	983, 984
Walla Wallas and Cayuses	April 11, 1859	8	992
Yakamas	April 18, 1859	8	1,045

*a* The United States agrees to appropriate \$100,000 to pay for depredations and forcible exactions.

*b* The United States agrees to pay for all depredations since 1815.

*c* Depredations committed since 1814 are to be paid by the United States, in consideration of the cession of Indian lands.

*d* The United States agrees to pay for all depredations since 1808.

*e* The United States agrees to pay all depredation claims.

LIST OF ALL TREATIES BY WHICH THE INDIANS AGREE TO USE THEIR BEST EFFORTS TO RETURN STOLEN PROPERTY OR TO PUNISH OFFENDERS, BUT DO NOT PROVIDE FOR PAYMENT OUT OF THEIR ANNUITIES.

[The references by pages are to the "Revision of Indian Treaties," 1873.]

TRIBES.	Date.	Article.	Page.
Belantse-Etoas, etc.	February 6, 1826	6	14, 15
Chippewas	January 29, 1855	6	225, 226
Chippewas	April 7, 1855	9	270
Chippewas	March 8, 1847	8	307
Comanches, Ionies, Anadacas, Caddoes, etc.	February 6, 1826	5	326, 327
Crows	February 14, 1805	3	336
Delawares	July 17, 1854	11	406
Iowas	August 10, 1854	10	429
Kaskaskias, Peorias	February 17, 1870	9	436
Klamath, etc.	July 17, 1854	9	447
Kickapoos	February 6, 1826	5	460
Makahs	August 4, 1854	9	519
Miamies	February 6, 1826	6	466
Mandans	December 26, 1815	9	573, 574
Osages	January 21, 1867	10	588
Osages	February 6, 1826	5	632
Otoes and Missourias	February 6, 1826	5	643
Pawnees	February 6, 1826	5	667, 668
Poncas	February 26, 1826	6	728, 729
Ricaras	April 12, 1854	6	731, 732
Rogue Rivers	July 17, 1854	10	761, 762
Sacs and Foxes	November 2, 1854	14	800
Shawnees	February 6, 1826	5	868
Sioux, Yanktons, Tetons, Yanktonais	February 6, 1826	5	872, 873
Sioux, Ogallallas	February 6, 1826	5	874, 875
Sioux, Onepapas	February 5, 1855	6	976
Umpquas	May 23, 1855	10	1,010
Winnebagoes			

LIST OF ALL TREATIES BY WHICH IT IS PROVIDED THAT THE INDIANS SHALL BE PAID BY THE GOVERNMENT FOR DEPREDEATIONS COMMITTED ON THEIR PROPERTY BY WHITE MEN.

[The references by pages are to the "Revision of Indian Treaties," 1873.]

TRIBES.	Date.	Article.	Page.
Blackfeet.....	April 25, 1856.....	7	9
Belantse-Etoas.....	February 6, 1826.....	6	14, 15
Cherokees.....	October 2, 1798.....	9	35
Creeks.....	August 28, 1856.....	18	112
Cheyennes and Arapahoes.....	August 19, 1868.....	1	130
Number Cheyennes and number Arapahoes.....	August 25, 1868.....	1	136
Choctaws and Chickasaws.....	March 4, 1856.....	14	280
Comanches and Wichitas.....	May 19, 1836.....	3	304
Comanches, Kiowas, Apaches.....	February 12, 1854.....	4, 108	310, 311
Comanches, Kiowas.....	August 25, 1868.....	1	319
Crows.....	February 6, 1826.....	5	326, 327
Crows.....	July 25, 1868.....	1	328
Kansas.....	December 30, 1825.....	10	413
Kiowas, Katakas, etc.....	February 21, 1838.....	3, 5, 7	456, 457
Makahs.....	February 6, 1826.....	5	460
Mandans.....	February 6, 1826.....	6	466
Navajoes.....	August 12, 1818.....	1	528
Osages.....	December 26, 1815.....	9	573, 574
Otoes and Missourias.....	February 6, 1826.....	5	643
Pawnees.....	February 6, 1826.....	5	643
Poncas.....	February 6, 1826.....	5	667, 668
Quapaws.....	July 15, 1818.....	6	717, 718
Ricaras.....	February 26, 1825.....	6	728, 729
Rogue Rivers.....	April 12, 1854.....	6	731, 732
Sacs and Foxes.....	February 12, 1823.....	5	738, 739
Shawnees.....	November 2, 1854.....	11	799
Sioux, Yanktons, Tetons, Yanktonais.....	February 6, 1826.....	5	868
Sioux, Ogallallas.....	February 6, 1826.....	5	872, 873
Sioux, Onkapapas.....	February 6, 1826.....	5	574, 575
Sioux, Ogallallas, Brulés.....	February 24, 1869.....	1	914, 915
Shoshones, Eastern, and Bannacks.....	February 24, 1869.....	1	932
Utahs.....	December 14, 1864.....	6	972
Umpquas.....	February 5, 1855.....	6	976
Utes.....	November 6, 1868.....	6	983, 984

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## EXHIBITS

TO

# REBELLION CLAIM.

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**EXHIBIT No. 1.**

SAN QUENTIN, CAL., December 21, 1879.

*My Dear Captain:* I received your letter of the twenty-seventh ultimo some time ago, and although I have twice been in Sacramento, I have been unable to see the General until two days ago. I find he has nothing to do with the matters of the State's war claims.

By Act of Congress, 1861, the Governors of States are made the agents, or declared the proper parties, to collect claims arising out of the rebellion. In accordance with this Act, and an Act of our Legislature, passed soon after Governor Booth became Governor, he appointed as agents for the purpose of making such collections, Judge Hale and Thos. Nosler. They employed me to put the papers in shape, which I did, and all the original vouchers were sent to Washington and are now in the hands of my friend Arthur Denver. These papers have been laying there for over seven years—why I do not know. Arthur Denver can explain the whole matter to you, as the business is in his hands, and he is interested. Of course, if he could have done anything before this he would have done so. As to the Indian war claims, the State absolutely refuses to recognize them, having outlawed them by Act of the Legislature many years ago. The Act was repudiation, nevertheless our glorious young State *did the thing*.

There is money in the civil war claims, the State's claim being just for a large sum of money. See Arthur and if you and he come to the conclusion anything can be done at present, I will bring about an arrangement with the agents in your interest. All well.

Yours truly,

JAMES A. JOHNSON.

Capt. John Mullan.

**EXHIBIT No. 2.**

Know all men by these presents, that on the twenty-sixth day of February, 1881, the Legislature of the State of California did pass the following Concurrent Resolution:

**CONCURRENT RESOLUTION, NO. 12.**

WHEREAS, The Legislature of the State of California did, on March 1, 1872, pass the following preamble and resolution, to wit:

WHEREAS, The Congress of the United States did, on the twenty-seventh of July, 1861, pass the following Act to wit: "Be it enacted," etc., "that the Secretary of the Treasury be, and he is hereby directed, out of any money in the Treasury not otherwise appropriated, to pay the Governor of any State, or his duly authorized agents, the costs, charges, and expenses properly incurred by such State for enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting its troops employed in aiding to suppress the present insurrection against the United States, to be settled upon, proper vouchers to be filed and passed upon by the proper accounting officers of the Treasury: and whereas, it is believed that, under this Act, a considerable sum of money is due from the General Government to the State of California; therefore, be it

*"Resolved by the Senate, the Assembly concurring, That the Governor be authorized to contract with the agents, to be appointed in accordance with the provisions of the Act referred*

to; that their compensation for services rendered under said Act shall not exceed in the aggregate ten per cent of the money collected and paid to the State, provided that the State shall, in no event, become liable for any expenses, fees, or salaries of any nature whatever, other than such contingent commission; and whereas, the Governor did, on the fifteenth day of March, 1872, appoint and commission James E. Hale and Thomas M. Nosler as agents on the part of the State of California to collect, or cause to be collected, such claims, and fixed the amount of the commissions at ten per cent of the sums collected; and whereas, the said sum of ten per cent is totally inadequate for the service to be performed, and the necessary expenses to be incurred; therefore, be it

*Resolved*, That the Governor is hereby authorized to fix the compensation to be received by the said Commissioners at twenty-five per cent of each of the sums or claims which may be, by them or their agents, collected from the Government of the United States.

And whereas, the said Commission issued, as recited in the foregoing preamble and resolution, to the said James E. Hale and Thomas M. Nosler, is as follows:

Know all men by these presents, that I, Newton Booth, Governor of the State of California, under and in pursuance of an Act of the Congress of the United States, entitled "An Act to indemnify the States for expenses incurred by them in defense of the United States," approved July 27, 1861, and in pursuance of Senate Concurrent Resolution, No. 36, adopted and concurred in by the Assembly at the nineteenth session of the Legislature of the State of California, reciting the said Act of Congress, and resolving that the Governor be authorized to contract with the agents, to be appointed in accordance with the provisions of the Act referred to; that their compensation, for services rendered under said Act, shall not exceed in the aggregate ten per cent of the moneys collected and paid to the State; *provided*, that the State shall, in no event, become liable for any expenses, fees, or salaries, of any nature whatever, other than such contingent Commission, have nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint those worthy and trusty citizens, James E. Hale, of the County of Placer, and Thomas M. Nosler, of the City and County of San Francisco, my true and lawful agents and attorneys in fact, for me and in my name, as Governor of the State of California, as aforesaid, and in my place and stead as such Governor, and for and in behalf of the State of California, to ask, demand, prosecute to collection, recover, and receive of and from the Government of the United States of America, all and every such sum or sums of money as may have been advanced, disbursed, paid, laid out, or expended by the State of California for enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting its troops, employed in aiding to suppress the insurrection against the United States, existing and in progress at the time of the passage of said Act of Congress; and my said agents are, and their said substitute or substitutes, are hereby authorized and empowered to prosecute, either in the name of the State of California or in my name, as the Governor thereof, any and all claims and demands which said State may have against the Government of the United States, for or on account of the costs and expenses incurred, paid, or defrayed, for the purposes before mentioned, under the Act of Congress, before mentioned, or any other Act of Congress, before the Courts of the United States, or the Congress thereof, or any department of the Government thereof, in such manner as to them, or him or them, shall seem to be for the best interests of said State of California; and upon the payment thereof, either in whole or in part, proper receipts and acquittances to give, sign, and deliver in my name, as such Governor; also, to sign all orders, vouchers, and all bonds of indemnity, or bonds on appeal, and to indorse all drafts, and orders, and vouchers in my name, as such Governor, either with or without indicating that the same is done by procuration, which may be requisite or necessary in or about the prosecution of said business, or the collection of said claims or demands. Giving and granting unto my said agents and attorneys in fact, and to their substitutes, full power and authority to do and perform all and every act or thing whatsoever, which may be or become necessary or requisite to be done in and about the premises, as fully, to all intents and purposes, as I, as such Governor, might or could do if personally present; and also one or more agents and attorneys under them to appoint, employ, and retain, with full power of substitution and revocation, hereby ratifying and confirming all that my said agents and attorneys, or their substitutes, shall lawfully do or cause to be done by virtue hereof; distinctly providing, however, that no expense or obligation shall be incurred by them, or him or them, in the prosecution of said business, or the collection of said claims or demands, for which the State of California, or I, as such Governor, shall or may, in any event, become liable. The compensation of my said agents and attorneys in fact, and their substitutes, being contingent upon the payment or adjustment of said claims or demands; this power of attorney is intended to include the protection of them and their interests, and compensation for them and their services in the premises, as per agreement of even date herewith, and, therefore, is and shall be irrevocable.

In testimony whereof, I hereunto set my hand, and have caused the great seal of State to be affixed, at the City of Sacramento, State of California, this fifteenth day of March, in the year of our Lord one thousand eight hundred and seventy-two.

[SEAL OF THE STATE OF CALIFORNIA.]

NEWTON BOOTH,  
Governor of California.

Now, therefore, by virtue of the power vested in me as Governor of the State of California, and by virtue of the said Act of Congress and the said resolution, hereinbefore recited, I hereby reaffirm the said Commission herein recited, with all the powers therein contained, and fix the compensation of the said Commissioners, in accordance with the said resolution, at the sum of twenty-five per cent of each of the sums or claims collected for the State of California from the Government of the United States.

In testimony whereof, I hereunto set my hand, and have caused the great seal of State to be affixed, at the City of Sacramento, State of California, this first day of March, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL OF THE STATE OF CALIFORNIA.]

GEORGE C. PERKINS,  
Governor of California.

STATE OF CALIFORNIA,  
Department of State. } ss.

I, Thomas L. Thompson, Secretary of State of the State of California, hereby certify that the foregoing is a full, true, and correct copy of a Commission and power of attorney, duly executed as therein set forth, by George C. Perkins, Governor of the State of California, on the first day of March, A. D. 1871, at the City and County of Sacramento, and caused the great seal of said State to be thereunto affixed, as therein set forth.

In testimony whereof, I hereunto set my hand, and have hereunto affixed the great seal of State of California, at the City of Sacramento, this ninth (9th) day of February, in the year of our Lord one thousand eight hundred and eighty-three.

[SEAL.]

THOS. L. THOMPSON,  
Secretary of State of the State of California.

## EXHIBIT No. 2½.

February 16, —.

Hon. O. WELBORN, U. S. H. R.

DEAR SIR: Permit me to call your attention to the fact that the Secretary of War in his estimates to Congress asks for \$25,000 in order to enable him to execute the Act of Congress, twenty-seventh June, 1882. In examining State claims, I am doing all I can as State Agent for California, Oregon, and Nevada, with our delegations, and because all three of said States are interested therein, and as Texas is also interested therein, may I ask your considerate attention to the matter, believing as I do, that a forcible word from you to the members of the Appropriation Committee having the Sundry Civil Bill in charge, would secure said item in said bill. I shall also give to our Pacific Coast Senators such data in regard thereto as may aid the matter in the Senate.

Yours very truly,

JOHN MULLAN,  
State Agent for California, Oregon, and Nevada.

Forty-eighth Congress, second session. H. R.

In the Senate of the United States. February 19, 1885—Referred to the Committee on Appropriations and ordered to be printed.

## AMENDMENT

Intended to be proposed by Mr. Dolph to the bill (H. R. —) making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-six, and for other purposes, viz.: Insert the following:

Examination of State claims under Act of June twenty-seventh, eighteen hundred and eighty-two: For payment of expenses of a Board of three



officers of the army to be detailed to assist the Secretary of War in examining and reporting upon the claims of the States and Territories named in the Act of June twenty-seventh, eighteen hundred and eighty-two (chapter two hundred and forty-one of the laws of the Forty-seventh Congress, first session), while on such duty, including clerk hire, hotel, traveling, and such other necessary expenses as shall be approved by the Secretary of War; *provided*, that said officers shall, before proceeding to the discharge of said duties, be sworn that they will carefully examine said claims, and that they will, to the best of their ability, make a just, true, and impartial statement thereof, as required by said Act; this amount to be immediately available, twenty-five thousand dollars.

### EXHIBIT No. 3.

Forty-ninth Congress, first session. Senate. Mis. Doc. No. 54.

#### LETTER FROM THE SECRETARY OF WAR TO HON. S. B. MAXEY,

*In relation to the claim of the State of Texas, presented under the Act of June 27, 1882.*

January 29, 1886—Referred to the Committee on Appropriations, and ordered to be printed.

WAR DEPARTMENT, }  
WASHINGTON CITY, January 17, 1886. }

SIR: Referring to our recent conversation in regard to the claim of the State of Texas, presented under the Act of June 27, 1882 (22 Stats., 111, 112), I have the honor to inform you that the first installment of the claim (amount, \$671,400 29) came before the Department from the Third Auditor of the Treasury July 9, 1884, and the action then taken in the matter appears in the letter from this Department to Mr. Dorn, dated July 16, 1884, copy herewith. The papers therein mentioned were returned to the agent of the State July 25, 1884. November 2, 1885, the Third Auditor of the Treasury wrote to the Department, transmitting, through Mr. W. H. Pope, agent of the State, the papers in the claim, which papers were received here November 17, 1885, and they are now being stamped and marked.

In regard to the subject of the State claims mentioned in said Act, I beg to inform you that the great difficulty experienced in disposing of the claim of the State of Kansas, the first one presented thereunder, has caused the Department to delay taking up the other claims pending. While the title of the Act, and the wording of the first section thereof, would seem to convey the impression that the claims were to be adjusted by the Secretary of the Treasury, "with the aid and assistance of the Secretary of War," the whole duty of examining and auditing the claims was, by Section 2, imposed upon the Secretary of War, leaving the Treasury Department the simple duty of verifying the computations of the Secretary of War.

The policy thus indicated differed widely from that prescribed in Section 236 of the Revised Statutes, that "all claims and demands whatever by the United States, or against them, and all accounts whatever in which the United States are concerned, either as debtors or as creditors, shall be settled and adjusted in the Department of the Treasury," and differs also from the provisions for the adjudication of State claims under the Act of July 27, 1861 (12 Stats., page 276), which were "to be settled upon proper vouch-

ers, to be filed, and passed upon by the proper accounting officers of the Treasury."

The claims arising under the Act are said to amount to \$10,000,000 (that of Texas is now stated at \$1,842,443 78), and the vast labor of examining the papers, pointing out the evidence required to perfect the vouchers and show the necessity of calling out the militia, whose services are charged for, fixing the rate to be allowed on each voucher, and tabulating the same, many thousand in number, must be performed by the Secretary of War, and no provision has been provided by Congress for this laborious work.

Two years were consumed in disposing of the claim of the State of Kansas, and if the same course is to be pursued with the other claims arising under the Act, it will be some time before the claim of Texas is reached; that of Nevada being next in order of receipt.

The subject of the claims was brought to the attention of Congress at the last session (see report of Secretary of War for 1884, pages 4, 5, and estimates for 1886 on page 206, of House Ex. Doc. No. 5, Forty-eighth Congress, second session), and it has again been presented in the Secretary's report for 1885 (pages 35 and 36). An estimate to defray the cost of examining the claims will be found on page 225 of House Ex. Doc. No. 5, Forty-ninth Congress, first session.

I inclose draft of a bill which, if enacted, will enable the Department to dispose of the matter.

Copies of the above mentioned reports are inclosed.

Very respectfully,

WM. C. ENDICOTT,  
Secretary of War.

Hon. S. B. Maxey, United States Senate.

### EXHIBIT No. 4.

Forty-ninth Congress, first session. S. 1284.

In the Senate of the United States. January 29, 1886.

Mr. Maxey introduced the following bill, which was read twice, and referred to the Committee on Appropriations:

#### A BILL

*To enable the Secretary of War to examine the claims of the States of Texas, Colorado, Oregon, California, and Nevada, and the Territories of Washington and Idaho, as directed by the Act approved June twenty-seventh, eighteen hundred and eighty-two, chapter two hundred and forty-one of the laws of the Forty-seventh Congress, first session.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the sum of twenty-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated, for payment of the expenses of a board of three officers of the army to be detailed to assist the Secretary of War in examining and reporting upon the claims of the States and Territories named in the Act of June twenty-seventh, eighteen hundred and eighty-two (chapter two hundred and forty-one of the laws of the Forty-seventh Congress, first session), while on such duty, including clerk hire, hotel, traveling, and such other necessary*

expenses as shall be approved by the Secretary of War; *provided*, that said officers shall, before proceeding to the discharge of said duties, be sworn that they will carefully examine said claims, and that they will, to the best of their ability, make a just, true, and impartial statement thereof, as required by said Act; this amount to be immediately available.

### EXHIBIT No. 5.

Forty-ninth Congress, first session. H. R. 9478.

In the Senate of the United States. July 1, 1886—Referred to the Committee on Appropriations and ordered to be printed.

### AMENDMENT.

Intended to be proposed by Mr. Maxey to the bill (H. R. 9478) making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-seven, and for other purposes, viz.: Insert the following:

That the sum of twenty-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for payment of the expenses of a board of three officers of the army to be detailed to assist the Secretary of War in examining and reporting upon the claims of the States and Territories named in the Act of June twenty-seventh, eighteen hundred and eighty-two (chapter two hundred and forty-one of the laws of the Forty-seventh Congress, first session), while on such duty, including clerk hire, hotel, traveling, and such other necessary expenses as shall be approved by the Secretary of War; *provided*, that said officers shall, before proceeding to the discharge of said duties, be sworn that they will carefully examine said claims, and that they will, to the best of their ability, make a just, true, and impartial statement thereof, as required by said Act; this amount to be immediately available.

### EXHIBIT No. 6.

The reading of the bill was resumed. The next amendment of the Committee on Appropriations was, after line 2160, to insert:

Examination of claims of certain States and Territories: To enable the Secretary of War to make examination and report upon the claims of the States and Territories named in the Act of June 27, 1882 (chapter 241 of the laws of the Forty-seventh Congress, first session), \$7,500, said sum to be expended in his discretion.

Mr. Edmunds. I should like to have the Chairman explain that fully. What are these claims?

Mr. Allison. These are the Indian hostility claims. An Act was passed June 27, 1882. I wish to amend the amendment by inserting \$10,000 in the line 2167 instead of \$7,500.

Mr. Edmunds. I wish the Senator would explain a little more fully what this provision is of 1882.

Mr. Allison. The Senator has the statutes. It applies to several States and Territories. It applies to Kansas, Texas, Oregon, and, I think, Nevada. The State of Kansas has had her claim settled and paid, and the State of

Texas, I believe, is now having her claims examined. It is necessary for the Secretary of War to have an appropriation for the purpose of enabling the proper officers of the Government to make these examinations. It is merely intended to cover expenditures.

Mr. Hoar. What are they?

Mr. Allison. The examinations are made by the regular army officers.

Mr. Hoar. What is the nature of the claims?

Mr. Allison. They arise out of Indian wars.

Mr. Edmunds. It is a pretty broad statute.

Mr. Allison. So it is.

Mr. Edmunds. I should be glad to have a little attention given to this. This Act of the twenty-seventh of June, 1882, chapter 241 of the laws of the first session of the Forty-seventh Congress (volume 22, page 111), provides—

That the Secretary of the Treasury is hereby authorized and directed, with the aid and assistance of the Secretary of War—

Which I suppose implies military assistance by the armies of the United States—

To cause to be examined and investigated all the claims of the States of Texas, Colorado, Oregon, Nebraska, California, Kansas, and Nevada, and the Territories of Washington and Idaho, against the United States of America for moneys alleged to have been expended and for indebtedness alleged to have been assumed by said States and Territories in organizing, arming, equipping, supplying, clothing, subsisting, transporting, and paying the volunteer and military forces of said States and Territories called into active service by the proper authorities thereof, between the fifteenth day of April, in the year 1861, and the date of this Act.

Being a period of twenty years in round numbers—

To repeal invasions and Indian hostilities in said States and Territories and upon their borders, including all proper expenses necessarily incurred by said States and Territories on account of said forces having been so called into active service as aforesaid, and also all proper claims paid or assumed by said States and Territories for horses and equipments actually lost by said forces while in line of duty in active service (excepting and excluding therefrom any claim said State of Oregon may have for money expended and indebtedness assumed or incurred in suppressing Modoc Indian hostilities during the Modoc Indian war, and in defending that State from invasion by said Indians during the years 1872 and 1873, which were submitted to and passed upon, by either approval or rejection, by Inspector-General James A. Hardie, United States Army). Said accounts for and on behalf of said State of Texas shall be confined to claims arising since the twentieth day of October, 1865, and shall include the necessary expenses of defense against Mexican raids or invasions, as well as those for defense against Indian hostilities, and for and on behalf of said Territories of Idaho and Washington for said claims arising in the years 1877 and 1878.

Then it makes sundry limitations. That Act is four years old and upward, and I should like to ask the Chairman of the committee how much money has been appropriated already for these examinations and reports.

Mr. Allison. This is the first appropriation, I will say to the Senator from Vermont, for this purpose, but it has been estimated for by every Secretary of War since the passage of this Act. Secretary Lincoln estimated \$25,000, and the present Secretary estimated \$25,000, and wrote to the committee a very urgent letter respecting it, and stated that these claims were being pressed. They are on file in the War Department, and they are being pressed by the States interested, and it is absolutely necessary that he shall have a small fund—he estimated for a fund of \$25,000—to enable him to make a critical and careful examination of these claims. The Committee on Appropriations inserted \$7,500, and have instructed me

since that to move to increase it to \$10,000. I therefore move that amendment to the amendment of the committee.

Mr. Edmunds. It is a very dangerous law.

Mr. Allison. So it is, but it is there.

Mr. Edmunds. I think we might well hold up a little while and see about that.

Mr. Allison. It is very difficult to hold up without repealing the law. The Committee on Appropriations on examination of the question felt that it was important to make some provision in order to give the Secretary of War an opportunity to make a careful investigation of these claims.

Mr. Edmunds. It is no more difficult to hold up than it has been for four years last past, I suppose. There is no gravitation that increases the rapidity of the pressure.

Mr. Allison. But the Secretary of War has already made some examinations. The State of Kansas has had all her claims presented, examined, and paid.

Mr. Edmunds. Out of what fund was the examination made?

Mr. Allison. It was made without any additional appropriation.

Mr. Edmunds. Why can it not be done again?

Mr. Allison. There was no appropriation made for the examination of those claims; but there has been one appropriation made for the payment of the Kansas claims, an appropriation of \$230,000.

Mr. Edmunds. Do you mean to say \$230,000 has been spent in the examination already?

Mr. Allison. No; I say claims have been examined to the extent of \$230,000 of the State of Kansas and have been paid by appropriations under that law. The claims of the State of Texas I think are much larger than the claims of the State of Kansas, and the claims of the other States and Territories are on file in the War Department, and the Secretary of War desires to make a careful and critical examination of certain of these claims, and he has no fund with which to make that examination. This appropriation is for that purpose.

The President *pro tempore*. The question is on agreeing to the amendment of the Senator from Iowa [Mr. Allison] to the amendment of the Committee on Appropriations.

Mr. Dolph. I desire to say in regard to this law that although it was passed before I became a member of this body I have examined it since, and the class of claims payment of which is provided for under the Act referred to by the Senator from Vermont is a class of claims that has always been paid by the General Government. The States have always been reimbursed for expenses in defending themselves against Indian hostilities and against invasions. There is not a precedent to the contrary since the Constitution was formed.

Mr. Edmunds. Does the Senator mean to say that was the breadth of this Act of 1882.

Mr. Dolph. Yes, sir, and some Acts have gone further. I took occasion in making a report on the claim of the State of New York to cite all the Acts that had ever been passed, and many of the reports that had been made on the claims of States—a report I made at the last session of Congress, in which I examined the matter thoroughly.

I say these are a class of claims that have always been paid to the States. The claims of Kansas have been examined and reported upon and paid, appropriations having been made for them. Now the Secretary of War reports that notwithstanding he details officers of the army to make these examinations and audit these claims, it requires money to pay the expense

of office rent, I think, and clerk hire and some other incidental expenses in the examination of the claims; and he has asked, as the preceding Secretary of War, his predecessor, asked, \$25,000 for that purpose.

The senior Senator from Texas [Mr. Maxey] introduced a bill at the present session, and I am not sure but it passed the Senate, making an appropriation of \$25,000 for that purpose. I am only sorry that he is not in his seat.

Mr. Plumb. That bill is in the Committee on Appropriations, and has not been passed.

Mr. Dolph. I know that it has not passed the House.

Mr. Allison. It has not passed the Senate. It was referred to the Committee on Appropriations.

Mr. Dolph. This is a small sum, but it will enable the work to be carried on. The claims have been presented, but they can not be examined without an appropriation. I am certain the appropriation is a proper one.

Mr. Plumb. There can not be any doubt in my judgment that the Government is committed not by this law, but by precedents that run clear back through the history of all the States in the Union, including the State of Vermont, the State of New York, and all the older States that had to do with the question of defense against Indians and other public enemies, except it may be in regard to the payment for horses. This law is certainly no broader than the bills that have been passed from time to time for the allowance of claims of the various States.

I had occasion many years ago, when I first introduced a bill on this subject, and which was finally incorporated in the law referred to, to run that question down very thoroughly, and I was very much surprised to find the number of precedents there were for action of that kind at a very early date, the Senator from Oregon says extending through the entire history of the Republic. It is true also, as stated by the Senator from Iowa, that the State of Kansas has gotten its pay, or the largest portion of it, under this law, amounting to about \$230,000.

I believe that the appropriation ought to be made. While I shall not at all object to making it \$10,000—and I think possibly that under the circumstances that may be the wiser thing to do—I still have a conviction, growing out of an experience which I will not here narrate, that it is a much larger sum than would be really necessary, if we could only apply to the administration of the War Department in this matter the rules that apply in the transaction of ordinary private business.

Mr. Edmunds. That is to have the officers work.

Mr. Plumb. This determination will be arrived at upon the judgment of army officers detailed for that purpose; and while it is true that in the paucity of room which exists in that great building, which has already cost, I think, about \$15,000,000, there is not space there to assemble a Board of three officers for this work; the only thing that is necessary to be done is to rent a building in which they can be stored. I think myself that if we could have this matter done as it ought to be done, a thousand dollars would be ample; but I have had experience enough in these matters to know that a thousand dollars does not amount to much in these cases, and, so far as I am concerned, I am entirely willing to accede to the proposed amendment of \$10,000. The Secretary wanted \$25,000, and as far as I am concerned I am glad to get off at \$10,000. The experience that I have had, as I said, indicates that that is outside the necessities of the situation.

Mr. Edmunds. This Act of 1882 is broader than Indian hostilities. It includes invasions, and it seems to imply that any State or Territory may,

on its own account, and in its own discretion, proceed to resist invasion, and prepare to suppress it, and to suppress Indian hostilities, and come to the Treasury of the United States to be reimbursed for whatever it has expended on its own account, and in its own way, and in its own discretion, for such purposes.

I was under the impression—I do not remember this law; I was not in the City of Washington at the time the Act passed—I was under the impression that it was the mission of the United States itself, as the Government of the whole people for the whole people, to repress Indian hostilities, and to repress and prevent invasions, and to resist invasions, and that it must be a very rare, and urgent, and extreme case, indeed, in which a State or Territory would be justified in resorting to military force to do either of these things. That is a case extreme and sudden as where the President of the United States, the Commander-in-Chief of all its armies and all its militia, had not time in the emergency to act and to bring the force of the Government of the whole people to bear for the objects named in this law.

It will be an agreeable surprise to the taxpayers of the State of Vermont, who had some experience of this kind during the war that is now called the confederate war, but used to be called the war of the rebellion, in raising troops to resist confederate attacks from the friendly and allied territory of Canada. We had never gotten up to the idea—and probably my people in Vermont never observed this Act—that the expense to which the State of Vermont went in putting troops on the border when the confederate authorities, as they were called, were fomenting invasions from that side of the country, as they had under the laws of war a perfect right to do, and as the English, favoring their side, were perfectly willing they should do, were to be paid for out of the Treasury of the United States.

It will be rather an agreeable surprise to us that we are to get one or two hundred thousand dollars on the theory of this Act and on this investigation; and that rather leads me from a local motive to be in favor of this investigation; but I am very much afraid (to come back to the philosophy and propriety of the thing) that this Act of 1882 goes altogether too far, and seems to be a continuing authority to the States and to the Territories to go on their own discretion, and in their own way, and do whatever they like, or think fit and proper, to resist any invasion that they may suspect that is about to be made, or any hostilities that are about to break out. I do not think it is a very safe Act.

Mr. Cockrell. Mr. President, I am very sorry indeed that the aspirations of the distinguished Senator from Vermont prevent him from speaking of the "war of the rebellion," and that he has got to be so particular, fearing that he may offend the sensibilities of those engaged in that war, that he calls it the war of the confederacy. I hope the Senator will not indulge in that expression any more. Call it by its right name—the war of the rebellion.

Mr. President, I drew the bill that is under discussion. Sundry bills on this question were referred to me in the Committee on Military Affairs, and I prepared this bill to meet all the cases, and I challenge the Senator from Vermont, or any other Senator, to show from 1789 down to this time one solitary law as well guarded, as carefully guarded, as closely guarded as this law is. I examined every solitary Act on this question; I examined all the appropriations that had been made, and I put every provision in this bill that had ever been put in any other bill in covering the expenditures to be made under it.

Read Section 2:

Sec. 2. That no higher rate shall be allowed for the services of said forces, and for supplies, transportation, and other proper expenses, than was allowed and paid by the United States for similar services in the same grade and for the same time in the United States Army serving in said States and Territories, and for similar supplies, transportation, and other proper expenses during the same time furnished the United States Army in the same country.

That did not give the States and Territories any opportunity of making any change over and above what the Army of the United States was at that very time paying in that region of country. Now read further:

And no allowance shall be made for services of such forces except for the time during which they were engaged in active service in the field; and no allowance shall be made for the services of any person in more than one capacity at the same time, or for any expenditures and indebtedness, and the purposes for which they were made, and accompanied with proper vouchers and evidence.

More complete guards could not be put around any provision.

Sec. 3. That to enable the said officers to make the examination and investigation herein authorized, the Governors of the said States and Territories, respectively, or their duly authorized agents, shall file with the Secretary of the Treasury abstracts and statements of all such claims by said States and Territories, showing the amounts of such expenditures and indebtedness, and the purposes for which they were made, and accompanied with proper vouchers and evidence.

Sec. 4. That the Secretary of the Treasury shall, at the earliest practicable time, report to Congress for final action the results of such examination and investigation, and the amount or amounts found to have been properly expended for the purposes aforesaid; *provided*, that whenever the examination of the accounts of any State or Territory heretofore mentioned shall have been completed, the same shall be separately reported to Congress, without reference to the final examination of the accounts of any other State or Territory.

This law provided that the Governors of the States and Territories should file with the Secretary of the Treasury an itemized account of every claim for which they asked reimbursement, accompanied by vouchers and receipts for the sum. This was to be done before any action was taken. Then the officers of the army, the regular officers, and the officers of the Treasury Department, were to examine all these accounts, and the closest scrutiny was required to be given. They were prohibited from allowing these States and Territories any more than the regular army acting in its ordinary capacity was allowing at the same time and place, and they were not allowed to pay these volunteer troops for any time except when they were in active service in the field in pursuit of Indians.

It is well known to every Senator here that in almost all the Western States and Territories there have been Indian outbreaks where the Indians would have completed their raid and their depredations before the President of the United States could have gotten a regular soldier within one hundred miles of the place unless he was stationed there. Look at the raid that was made through Kansas. Its traces remain there, the remains of what was done even before the Governor of the State could get the militia out to meet the raid. So it was in Washington Territory, so it was in Oregon, and so it was in other places.

This law was provided to adjust all these. Each State or Territory was coming in with a separate bill, and these were all taken together, and this bill was provided for that purpose. In many other cases where bills have been passed, the auditing by the Treasury and War Department was an absolute settlement of the claims, and they were paid; but in this case under this law, even after the Secretary of War and the Secretary of the Treasury have both adjudged the claims to be just, they cannot pay a dollar of them. They simply examine them and then report them back to

Congress, and it is then in the power of Congress to do just what it pleases—appropriate or not.

There has only been one State whose claims have been entirely complete and reported to Congress, and that was the State of Kansas; the accounts of that State were in a nearer state of completion than any other, and probably (unless possibly Texas may be as large) Kansas had the largest claims of any State or Territory. There were for years separate bills pending here, and they had been reported favorably, and had passed the Senate once, I believe, for the reimbursement of Kansas alone, appropriating a certain amount of money. At the Congress of 1882, all these bills were put together, and this law was prepared and was passed. There was a report made in the case, quite a lengthy report, giving the whole history of it.

The bill was prepared and reported, and, after full investigation, became a law, and I assure the Senator from Vermont that if that law is followed there can be no swindling under it, there can be no advantage taken. The Governors have to file the accounts, itemized, with the vouchers and the receipts. Then the Department investigates them, and by the rules there they report what they think ought to be allowed, and then Congress determine whether they will pay a dollar or not.

Mr. Hawley. I think the question before the Senate is not upon the merits of that statute, but the question is whether the United States will examine these papers with a view of either refusing or paying these claims. I have not observed that claims diminish with age. The evidence decreases but the claim has usually grown.

One other observation I wish to make to my friend, the Senator from Vermont. He intimated that if the statute had been known to be in force it was possible Vermont might have gained some benefit from this appropriation for repelling invasions from Canada during the war of the rebellion. This is a little mistake. He will find himself without any benefit under the Act, because there was a payment made to the State of Vermont for expenses incurred in protection against invasions from Canada in 1864, by the Act of June 26, 1866, amounting to \$16,463 81, and the amount has been paid.

Mr. Edmunds. That amount has been paid, but the others have not.

The President *pro tempore*. The question is on the amendment proposed by the Senator from Iowa to the amendment of the committee.

Mr. Hawley. I still have the floor. I was only going to add in response to the remark of the Senator from Vermont that that was all Vermont claimed on the fourth of September, 1867, apparently.

Mr. Edmunds. We had not the Act of 1882 in force at that time.

Mr. Hawley. No; the Act of 1882 was not in force, but the Senator referred to expenses incurred by Vermont in attempting to protect herself against invasions from Canada during the rebellion, and if Vermont failed to present her bill in 1867 when she had an opportunity under a law for that, she is not a good Yankee State.

Mr. Edmunds. Probably not a law to this effect unhappily at that time.

Mr. Maxey. I shall not go over the ground occupied by the Senator from Missouri. I was myself a member of the Committee on Military Affairs at the time the Act of 1882 was prepared by that committee, presented to the Senate, passed through the Senate without, as far as I remember, a single amendment to it, went to the House, passed the House, and became a law. There were various States which had claims, and each of those States had presented a separate bill, Kansas, Nevada, Colorado, Oregon, Texas, and by amendments placed on the bill after it came to the Senate.

on the motion of the late Senator from California, Mr. Miller, California was added. There was also the Territory of Washington and there were some other Territories perhaps included. The Committee on Military Affairs took all those bills and directed a committee bill to be prepared, which was done by the Senator from Missouri, and that bill passed as I have stated.

Now, the question is, shall the law be carried out? After the passage of this bill in 1882, Mr. Lincoln then being Secretary of War, I went to the War Department and had a conversation with him. He stated to me that there was a necessity for an appropriation to enable him to carry out this law, and after conferring with him in regard to it he sent a special estimate to the Committee on Appropriations, which is on file in the papers of that committee. When I returned to the Senate from the War Department I prepared an amendment to the appropriation bill then pending, sent it to the Committee on Appropriations, and they allowed the appropriation, which was \$25,000. It came to the Senate and passed the Senate. No one dissented. It was lost in some way in conference.

During the present session of Congress I had another conversation with the present Secretary of War, Mr. Endicott, on the same subject. He took the same view as Mr. Lincoln, that this appropriation was necessary in order to the faithful execution of the law. He took the same course that Mr. Lincoln had taken. I proposed the amendment to the Committee on Appropriations. That committee took it up. That was also \$25,000, but the committee reported only \$7,500, which, in my judgment, is not enough to put the law in operation, according to the views of the Secretary of War; and the amount is now proposed to be increased to \$10,000.

A word now on the subject of precedents. It was not necessary for the Senator from Connecticut to have stopped at the precedent for Vermont. There is a precedent for Minnesota and many other States, all of which were examined by the Committee on Military Affairs before this bill was presented from that committee to the Senate. But there can be no question whatever, where a State honestly and in good faith has expended money to raise forces to defend her own people when there are not sufficient troops at the command of the Federal Government to give them protection, that it is the bounden duty of the State to provide for the defense of her citizens from the scalping-knife of the Indian or from the raids of the Mexican.

That there were raids across the Rio Grande during a number of years into Texas, accompanied by robbery, arson, and every crime known to the law, is a part and parcel of the history of this country. That continued for years, and the State of Texas as a matter of duty to her own citizens did organize forces and send them to the frontier to protect her citizens. Subsequently the United States Government did send troops there in sufficient numbers to furnish defense, and I was informed by the late distinguished General of the Army, the brother of the present distinguished presiding officer of the Senate, that he had placed on the frontier of Texas a quarter of the effective force of the entire army. It was absolutely necessary to the defense of that frontier for one thousand two hundred miles, and a large portion of that a wilderness, to place one fourth of the army there. My honored colleague [Mr. Coke] was for a portion of that time Governor of the State, and as a matter of duty he called out forces and did defend the frontier.

A State has no power to raise and support armies. It is the duty of the Federal Government to provide for the common defense, and, *ex necessitate rei*, when the duty is temporarily devolved on the States to raise troops, it

is the business of the Government, who ought to exercise that duty, to refund the money thus paid by the State for the common defense.

So, Mr. President, the attack on this appropriation goes further than that. It is an attack on the majesty of the law. The law is in force on the statute book, and the proper officer, the Secretary of War, declares that he can not execute that law without the aid of this appropriation; and the Appropriation Committee has done its duty when it comes forward with the necessary appropriation to enable the Secretary of War to discharge that duty. Of all the States which were embraced in that law, the State of Kansas and that only has received the amount to which she was justly entitled.

That claim went through the War Department and went through the Treasury Department. They came to Congress and the necessary appropriation was made. Why make fish of one and flesh of another? Why, having paid that claim, lock and bar and bolt the door and say no other State shall be indemnified? That will not do. It is not just and it is not right that the appropriation should be refused.

If these claims are not just, you have three distinct ways of closing the matter out, I say to the Senator from Vermont. First, if the claims are not just and meritorious, it is the duty of the Secretary of War so to say. Second, the claims are visaed by the Secretary of War before they are submitted here to Congress, and after all that is done the claims are presented here to this body; and it is for Congress after full investigation to determine whether or not these claims shall be paid.

De Lolme said that in a certain difficulty between the executive and the legislative department in England the executive could supply a ship of war but Parliament could leave the ship stranded; in other words, he would not make the necessary appropriation to carry out the law of the land. That is a dangerous method of thwarting law, and there is no need for it. If these claims are honest we have here the means of determining the fact, and if they are honest and clear we should pay them. If they are not honest claims then Congress can so say and payment be disallowed; but in the meantime let the law be carried out, furnish the officers of the Government the means of examining and auditing these claims and presenting them in a legal and intelligent form to Congress so that we may act upon them and determine whether or not they should be allowed.

I hope the amount will be raised to \$10,000. I personally believe it is all we can get, but I do not know that the Secretary of War can carry out the Act with that, but he can start with that.

My State is no more interested in this matter than the State of Ohio, the State of Nevada, the State of California, the State of Colorado, and the Territories which have no representation in this body; but, sir, in the name of justice and fair dealing and right between man and man it is right that these States if they have a claim should have a fair and just way of presenting and asserting that claim, and if the claims are honest Congress should allow them.

The President *pro tempore*. The question is on agreeing to the amendment of the Senator from Iowa to the amendment of the Committee on Appropriations.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

## EXHIBIT No. 6½.

Forty-eighth Congress, second session. S. 656. Calendar No., 1000. Report No. 984.

In the Senate of the United States. December 13, 1883.

Mr. Jones of Nevada, asked and, by unanimous consent, obtained leave, to bring in the following bill; which was read twice and referred to the Committee on Claims.

January 13, 1885—Reported by Mr. Dolph with amendments, viz.: Omit the parts struck through and insert the parts printed in *italics*.

### A BILL

*For the benefit of the States of California, Oregon, and Nevada (and Nevada when a Territory).*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That whenever the Secretary of the Treasury and the Secretary of War, in adjusting the claims of the States of California, Oregon, and Nevada (and Nevada when a Territory) arising under the Acts of Congress approved July twenty-seventh, eighteen hundred and sixty-one, and June twenty-seventh, eighteen hundred and eighty-two (United States Statutes, volume twelve, page two hundred and seventy-six, and volume twenty-two, page one hundred and eleven), shall find that any original paper relating to the claims of said States as provided for in said Acts shall have been lost, destroyed, or missing, upon proof thereof a copy thereof, and copies of all documents and papers relating thereto, may be certified to by the proper State officers of such State having custody of such papers, under their seals of office; and such evidence, and all other competent secondary evidence, when filed with the Secretary of the Treasury or Secretary of War, shall be received by them in lieu of such lost original paper, and used in evidence in the adjustment of their said claims in all respects as said original.*

Forty-eighth Congress, second session. Senate. Report No. 984.

In the Senate of the United States, January 13, 1885—Ordered to be printed.

Mr. Dolph, from the Committee on Claims, submitted the following

### REPORT.

[To accompany bill S. 656.]

The Committee on Claims, to whom was referred the bill (S. 656) for the benefit of the States of California, Oregon, and Nevada, and Nevada when a Territory, have duly examined the same, and report the same back to the Senate with amendments.

By the Act of Congress entitled "An Act to indemnify the States for expenses incurred by them in defense of the United States," approved July 27, 1861, the Secretary of the Treasury was authorized and directed "to pay to the Governor of any State, or to his duly authorized agents, the costs, charges, and expenses properly incurred by such State for enrolling,



subsisting, clothing, supplying, arming, equipping, paying, and transporting its troops employed in aiding to suppress the present insurrection against the United States, to be settled upon proper vouchers to be filed and passed upon by the proper accounting officers of the Treasury."

By the first section of an Act of Congress approved June 27, 1882, the Secretary of the Treasury was authorized and directed, with the aid and assistance of the Secretary of War, to cause to be examined and investigated all the claims of the States of Texas, Colorado, Oregon, Nebraska, California, and Nevada, and the Territories of Washington and Idaho against the United States for money alleged to have been expended, and for indebtedness alleged to have been assumed, by said States and Territories in organizing, arming, equipping, supplying clothing, subsistence, transporting, and paying the volunteer and military forces of said States and Territories called into active service by the proper authorities thereof between the fifteenth day of April, 1861, and the date of said Act, to repel invasion and Indian hostilities in said States and Territories, and upon their borders, including all proper expenses necessarily incurred by said States and Territories on account of said forces having been so called into active service, and all proper claims paid or assumed by said States and Territories for horses and equipments actually lost by said forces in the line of duty in active service, excepting the claim of the State of Oregon for expenditures in suppressing the Modoc Indian hostilities, the payment for which had already been provided for by Act of Congress.

By the second section of said Act it was provided that no higher rate for supplies, transportation, and other proper expenses than was allowed and paid by the United States for similar services in the same grade and for the same time in the United States Army serving in said States and Territories, and for similar supplies, transportation, and other proper expenses during the same time furnished the United States Army in the same country, and that no allowance should be made for the services of such forces except for the time during which they were engaged in active service in the field, or for expenditures for which the Secretary of War should decide there was no necessity at the time and under the circumstances.

The first section of the bill under consideration is intended to authorize the Secretary of the Treasury and the Secretary of War, in adjusting the claims of the said States, under the Acts above mentioned, to receive secondary evidence of the contents of any original paper relating to claims under said Acts which may have been lost or destroyed. When amended, as proposed by your committee, this section seems to be unobjectionable.

The second section is intended to authorize the accounting officers of the Treasury, in adjusting the claims of said States under said Acts, to credit such of said States and Territories with the amount of money actually expended by them from their respective Treasuries, on account of extra pay, bounty, and relief to troops called into the service of the United States.

Large amounts were paid by States and municipal corporations for bounty and relief to volunteers during the war of the rebellion.

Your committee has been unable to find that the United States has yet assumed or paid to any State under the provisions of the Act of July 27, 1861, or any other Act, the amounts so paid by such State for bounty or relief, and is unwilling, at this time, to establish a precedent for such payment.

Your committee, therefore, report the bill back to the Senate, and recommend that when the amendments proposed by the committee are made to the bill, it do pass.

## EXHIBIT No. 7.

Forty-ninth Congress, first session. S. 71. Report No. 572.

In the House of Representatives. February 4, 1886—Read twice, and referred to the Committee on the Judiciary.

February 17, 1886—Reported with amendments, referred to the House Calendar, and ordered to be printed. Omit the parts struck through, and insert the part printed in *italics*.

### AN ACT

*For the benefit of the States of Texas, Colorado, Oregon, Nebraska, California, Kansas, and Nevada, and the Territories of Washington and Idaho, and Nevada when a Territory.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That whenever the Secretary of the Treasury and the Secretary of War, in adjusting the claims of the States of Texas, Colorado, Oregon, Nebraska, California, Kansas, and Nevada, and the Territories of Washington and Idaho, and Nevada when a Territory, arising under Acts of Congress approved July twenty-seventh, eighteen hundred and sixty-one, and June twenty-seventh, eighteen hundred and eighty-two (United States Statutes, volume twelve, page two hundred and seventy-six, and volume twenty-two, page one hundred and eleven), shall find that any original paper relating to the claims of said States, as provided for in said Acts, shall have been lost, destroyed, or missing, upon proof thereof, a copy thereof may be certified by the proper State officers of such State having custody of such papers, under their seals of office; and such evidence, when filed with the Secretary of the Treasury or Secretary of War, shall be received by them in lieu of such lost original papers, and used in evidence in the adjustment of their said claims in all respects as said original.*

*SEC. 2. That the Secretary of War is hereby authorized to detail three army officers to assist him in examining and reporting upon the claims of the States and Territory named in the Act of June twenty-seventh, eighteen hundred and eighty-two, chapter two hundred and forty-one of the laws of the Forty-seventh Congress; and such officers, before entering upon said duties, shall take and subscribe an oath that they will carefully examine said claims, and that they will, to the best of their ability, make a just and impartial statement thereof, as required by said Act.*

Passed the Senate February 3, 1886.

Attest:

ANSON G. MCCOOK, Secretary.

[PUBLIC—No. 168.]

*An Act for the benefit of the States of Texas, Colorado, Oregon, Nebraska, California, Kansas, and Nevada, and the Territories of Washington and Idaho, and Nevada when a Territory.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That whenever the Secretary of the Treasury and the Secretary of War, in adjusting the claims of the*

States of Texas, Colorado, Oregon, Nebraska, California, Kansas, and Nevada, and the Territories of Washington and Idaho, and Nevada when a Territory, arising under Acts of Congress approved July twenty-seventh, eighteen hundred and sixty-one, and June twenty-seventh, eighteen hundred and eighty-two (United States Statutes, volume twelve, page two hundred and seventy-six, and volume twenty-two, page one hundred and eleven), shall find that any original paper relating to the claims of said States, as provided for in said Acts, shall have been lost, destroyed, or missing, upon proof thereof a copy of such paper may be certified by the proper officers of such State or Territory, under their seals of office; or, if such copy cannot be furnished, any other competent secondary evidence of the contents of such paper, when filed with the Secretary of the Treasury or Secretary of War, shall be received by them in lieu of such lost original papers, and used in evidence in the adjustment of their said claims in all respects as said original.

All provisions of this section applicable to States shall be equally applicable to the Territories.

SEC. 2. The Secretary of War is hereby authorized to detail three army officers to assist him in examining and reporting upon the claims of the States and Territory named in the Acts of June twenty-seventh, eighteen hundred and eighty-two, chapter two hundred and forty-one of the laws of the Forty-seventh Congress; and such officers, before entering upon said duties, shall take and subscribe an oath that they will carefully examine said claims, and that they will, to the best of their ability, make a just and impartial statement thereof, as required by said Act.

Approved August 4, 1886.

### EXHIBIT No. 8.

Special Orders, No. 232.

HEADQUARTERS OF THE ARMY, ADJUTANT-GENERAL'S OFFICE, }  
WASHINGTON, October 6, 1886. }

*Extract.*

\* \* \* \* \*  
4. Under the provisions of section two of an Act of Congress, approved August 4, 1886, entitled "An Act for the benefit of the States of Texas, Colorado, Oregon, Nebraska, California, Kansas, and Nevada, and the Territories of Washington and Idaho, and Nevada when a Territory," the following named officers are, by direction of the Secretary of War, detailed to assist him in examining and reporting upon the claims of the States and Territory named in the Acts of June 27, 1882:

Major James Biddle, Sixth Cavalry.

Major Henry J. Farnsworth, Inspector-General.

Captain Edward Hunter, First Cavalry.

The officers named will report in person to the Secretary of War, in this city, at as early a date as practicable. The travel enjoined is necessary for the public service.

\* \* \* \* \*  
By command of Lieutenant-General Sheridan.

R. C. DRUM,  
Adjutant-General.

[Official:]

### EXHIBIT No. 9.

WASHINGTON, D. C., September 18, 1886.

*The Secretary of the Treasury:*

SIR: I have the honor to deliver you herewith, to be examined under the Act of June 27, 1882, and Acts amendatory thereof and supplemental thereto, or under such other Acts as may pertain thereto, the claims of the "State of California," as set forth in—

Abstract "A," aggregating	.....	\$204,020 00
Abstract "B," aggregating	.....	25,827 40
Abstract "C," aggregating	.....	53,682 69
Abstract "D," aggregating	.....	74,550 90
Abstract "E," aggregating	.....	11,945 50
Abstract "F," aggregating	.....	24,260 00
Abstract "G," aggregating	.....	9,968 41
Abstract "H," aggregating	.....	52,992 53
Abstract "K," aggregating	.....	46,231 15
Abstract "L," aggregating	.....	3,253 45
Abstract "M," aggregating	.....	14,249 36
Abstract "N," aggregating	.....	23,313 91
Abstract "O," aggregating	.....	30,984 51
Abstract "P," first volume	.....	\$632,095 09
Abstract "P," second volume	.....	385,715 04
Abstract "P," third volume	.....	442,344 28
		1,460,154 41
Abstract "Q," first volume	.....	\$158,750 00
Abstract "Q," second volume	.....	123,930 00
Abstract "Q," third volume	.....	172,650 00
Abstract "Q," fourth volume	.....	222,960 00
Abstract "Q," fifth volume	.....	224,899 50
		903,189 50

Aggregating a grand total of \$2,938,623 72, and all of which abstracts, in twenty-one bound volumes, are now also herewith delivered to you, Abstract "P" containing three, and Abstract "Q" containing five volumes.

The papers are contained in eight boxes, as follows, to wit:

Box No. 1, containing the papers relating to Abstract "A," with vouchers from No. 1 to No. 203, inclusive.

Abstract "B," vouchers from No. 1 to No. 65, inclusive.

Abstract "C," vouchers from No. 1 to No. 322, inclusive.

Abstract "D," vouchers from No. 1 to No. 98, inclusive.

Abstract "E," vouchers from No. 1 to No. 44, inclusive.

Abstract "F," vouchers from No. 1 to No. 6, inclusive.

Abstract "G," vouchers from No. 1 to No. 50, inclusive.

Abstract "H," vouchers from No. 1 to No. 326, inclusive.

Abstract "K," vouchers from No. 1 to No. 166, inclusive.

Abstract "L," vouchers from No. 1 to No. 34, inclusive.

Abstract "M," vouchers from No. 1 to No. 124, inclusive.

Abstract "N," vouchers from No. 1 to No. 63, inclusive.

Abstract "O," vouchers from No. 1 to No. 277, inclusive.

Box No. 2, containing vouchers from No. 1 to No. 796, inclusive, relating to Abstract "P."

Box No. 3, containing vouchers from No. 797 to No. 8,408, inclusive, relating to Abstract "P."

Box No. 4, containing vouchers from No. 8,409 to No. 11,859, inclusive, relating to Abstract "P."

Box No. 5, containing vouchers from No. 1 to No. 4,399, inclusive, relating to Abstract "Q."

Box No. 6, containing vouchers from No. 4,400 to No. 9,919, inclusive, relating to Abstract "Q."

Box No. 7, containing vouchers from No. 9,920 to No. 14,337, inclusive, relating to Abstract "Q."

Box No. 8, containing vouchers from No. 14,338 to No. 19,580, inclusive, relating to Abstract "Q."

Also find herewith affidavit that no portion of said claim has been heretofore ever paid to the State of California by the United States, or by any officer thereof.

As these claims are being examined from time to time by either the Treasury or War Department, I respectfully request to be kept fully informed of any matter that may be wanting therein, so that I may supply the same upon due notice thereof.

Respectfully,

JOHN MULLAN,

Agent and Counsel for the State of California.

WASHINGTON, D. C., 1310 Connecticut Avenue, September 18, 1886.

[Copy.]

City of Washington, County of Washington, District of Columbia.

OFFICE OF STATE AGENT FOR THE STATE OF CALIFORNIA, }  
WASHINGTON CITY, D. C., September 18, 1886. }

John Mullan, on first being duly sworn, says that he is now the State Agent for the State of California, temporarily residing in the City of Washington, District of Columbia, for the purpose, among other things, of presenting to the proper departments, bureau authorities, and Congress of the United States, the various claims of the State of California against the United States, and demanding and receiving payment therefor from the United States to said State; that he has read the several abstracts, to wit, A, B, C, D, E, F, G, H, K, L, M, N, O, P, and Q, and also the several exhibits and vouchers and other papers thereunto pertaining, and in regard to the matter of California's said war claims against the United States and the whole thereof; that all the matters therein contained (errors and omissions excepted) are true of his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters that he believes the same to be true; that he, on oath, declares and certifies that the foregoing abstracts clearly set forth a full, true, and correct statement of the claim of the State of California on account of the matters specifically enumerated in said abstracts, and as the same existed on the seventeenth day of September, eighteen hundred and eighty-six; that no part or portion thereof has ever heretofore been paid to the State of California by the United States, nor by any officer thereof, and that the amounts stated in said abstracts were due and payable by the United States to the State of California on the seventeenth day of September, eighteen hundred and eighty-six.

JOHN MULLAN,  
State Agent for California.

Subscribed and sworn to before me this eighteenth day of September, eighteen hundred and eighty-six.

JOHN M. LAWTON,  
Notary Public, District of Columbia.

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## EXHIBITS

OF

# CLAIM FOR INTEREST.

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## EXHIBIT No. 1.

Forty-eighth Congress, first session. S. 320.

In the Senate of the United States. December 5, 1883.

Mr. Miller of California, asked and, by unanimous consent, obtained leave to bring in the following bill; which was read twice and referred to the Committee on Claims:

### A BILL

*Authorizing the payment of interest due to the States of California, Oregon, and Nevada (and Nevada when a Territory).*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the proper accounting officers of the Treasury Department be and they are hereby authorized and directed to liquidate and settle the claims of the States of California, Oregon, and Nevada (and Nevada when a Territory) against the United States, for interest upon loans or moneys borrowed and actually expended by them for the use and benefit of the United States during the late war for suppressing insurrection and rebellion, and also on account of Indian hostilities in said States and Territory.*

SEC. 2. That in ascertaining the amounts of interest as aforesaid due to the States of California, Oregon, and Nevada (and Nevada when a Territory), the following rules shall be understood as applicable to and governing the cases, to wit:

*First*—That interest shall not be computed on any sums which California, Oregon, and Nevada (and Nevada when a Territory) have not expended for the use and benefit of the United States, as evidenced by the amounts refunded or repaid, or to be repaid, to California, Oregon, and Nevada (and Nevada when a Territory) by the United States.

*Second*—That no interest shall be paid on any sums on which they have not paid interest.

*Third*—That when the principal or any part of it has been paid or refunded by the United States, or money placed in the hands of California, Oregon, and Nevada (and Nevada when a Territory) for that purpose, the interest on the sum or sums so paid or refunded shall cease and not be considered as chargeable to the United States any longer than up to the time of the repayment as aforesaid.

SEC. 3. That the amounts of interest, when ascertained as aforesaid, shall be paid out of any money in the Treasury not otherwise appropriated.

## EXHIBIT No. 2.

Forty-eighth Congress, first session. H. R. 109. Printers No., 109.

In the House of Representatives. December 10, 1883—Read twice, referred to the Committee on War Claims, and ordered to be printed.

Mr. Henley introduced the following bill:

### A BILL

*Authorizing the payment of interest due to the States of California, Oregon, and Nevada (and Nevada when a Territory).*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the proper accounting officers of the Treasury Department be and they are hereby authorized and directed to liquidate and settle the claims of the States of California, Oregon, and Nevada (and Nevada when a Territory) against the United States for interest upon loans or moneys borrowed and actually expended by them for the use and benefit of the United States during the late war for suppressing insurrection and rebellion, and also on account of Indian hostilities in said States and Territory.

SEC. 2. That in ascertaining the amounts of interest as aforesaid due to the States of California, Oregon, and Nevada (and Nevada when a Territory) the following rules shall be understood as applicable to and governing the cases, namely:

*First*—That interest shall not be computed on any sums which California, Oregon, and Nevada (and Nevada when a Territory) have not expended for the use and benefit of the United States, as evidenced by the amounts refunded or repaid, or to be refunded or to be repaid, to California, Oregon, and Nevada (and Nevada when a Territory) by the United States.

*Second*—That no interest shall be paid on any sums on which they have not paid interest.

*Third*—That when the principal, or any part of it, has been paid or refunded by the United States, or money placed in the hands of California, Oregon, and Nevada (and Nevada when a Territory) for that purpose, the interest on the sum or sums so paid or refunded shall cease, and not be considered as chargeable to the United States any longer than up to the time of the repayment as aforesaid.

SEC. 3. That the amounts of interest, when ascertained as aforesaid, shall be paid out of any money in the Treasury not otherwise appropriated.

### EXHIBIT No. 3.

Forty-eighth Congress, first session. H. R. 2930. Printer's No., 3037.

In the House of Representatives. January 8, 1884—Read twice, referred to the Committee on War Claims, and ordered to be printed.

Mr. Oury introduced the following bill:

### A BILL

*To reimburse the States and Territories for interest on money heretofore used and expended by them in the suppression of Indian hostilities.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the proper accounting officers of the Treasury Department be and they are hereby authorized and directed to examine, adjust, and settle the claims of the several States

and Territories for interest upon loans or moneys borrowed and heretofore actually expended by said States and Territories, respectively, in the suppression of Indian hostilities; *provided*, that the benefits of this Act shall not extend to any State or Territory which shall not have presented a claim for such interest at the expiration of one year from the date of the passage of this Act.

SEC. 2. That in ascertaining the amount of interest due to any State or Territory, as aforesaid, the following rules shall be applicable and shall govern the case, to wit:

*First*—That interest shall not be computed on any sum which such State or Territory has not heretofore expended in the suppression of Indian hostilities, as evidenced by the amount of money refunded or repaid, or which may hereafter be refunded or repaid, to such States or Territories which have heretofore made such expenditures.

*Second*—That no interest shall be paid to any State or Territory on any sum on which said State or Territory shall not have paid or lost interest.

*Third*—That when the principal, or any part of it, has been paid or refunded by the United States to any such State or Territory, or placed in the hands of such State or Territory for that purpose, interest on the amount of the sum or sums so paid or refunded shall cease, and not be considered as chargeable to the United States any longer than up to the time of the repayment aforesaid.

*Fourth*—That interest in all cases contemplated by this Act shall be computed at the rate of six per centum per annum.

SEC. 3. That the amount of interest due to any State or Territory, when ascertained as aforesaid, shall be paid to the Governor of such State or Territory, or the duly authorized agent thereof, by the Secretary of the Treasury, out of any money in the Treasury not otherwise appropriated.

### EXHIBIT No. 4.

Forty-eighth Congress, first session. H. R. 2463. Printer's No., 7239. [Report No. 1102.]

In the House of Representatives. January 8, 1884—Read twice, referred to the Committee on War Claims, and ordered to be printed.

April 1, 1884—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Stevens introduced the following bill:

### A BILL

*To reimburse the several States for interest paid on war loans, and for other purposes.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the proper accounting officers of the Treasury Department be and they are hereby authorized and directed to examine, adjust, and settle the claims of the several States of the Union against the United States for interest upon loans or moneys borrowed and actually expended by said States, respectively, for the use and benefit of the United States, under authority of the Act of Congress entitled "An Act to indemnify the States for expenses incurred by them in defense of the United States," approved July twenty-seventh, eighteen hundred and sixty-

one, and under the explanatory joint resolution entitled "joint resolution declaratory of the intent and meaning of a certain Act therein named," approved March eighth, eighteen hundred and sixty-two, and kindred Acts, providing for the reimbursement of moneys advanced by States to aid in suppressing the rebellion; *provided*, that the benefits of this Act shall not extend to any State which shall not have presented a claim for such interest at the expiration of one year from the date of the passage of this Act.

SEC. 2. That in ascertaining the amount of interest due to any State as aforesaid the following rules shall be applicable and shall govern the case, to wit:

*First*—That interest shall not be computed on any sum which such State has not expended for the use and benefit of the United States, as evidenced by the amount refunded or repaid, or which may hereafter be refunded or repaid, to such State, under and by authority of the said Acts of Congress and the explanatory resolution hereinabove referred to.

*Second*—That interest shall not be paid to any State on any sum on which such State shall not have paid or lost interest.

*Third*—That when the principal, or any part of it, has been paid or refunded by the United States to any State, or placed in the hands of such State for that purpose, interest on the amount of such sum or sums so paid or refunded shall cease, and not be considered as chargeable to the United States any longer than up to the time of the repayment aforesaid.

*Fourth*—That interest shall in all cases contemplated by this Act be computed at the rate of six per centum per annum.

SEC. 3. That the amount of interest due to any State, when ascertained as aforesaid, shall be paid out of any money in the Treasury not otherwise appropriated.

#### EXHIBIT No. 5.

#### TO THE COMMITTEE ON WAR CLAIMS.

U. S. House of Representatives.

The object of H. B. No. 2364, as its language plainly imports, is to provide for the payment of interest by the United States to the several States entitled thereto, *not* upon the *whole* amount of their respective advances to the United States, for the purposes mentioned in the Reimbursement Acts of 1861 and 1862; but on *that part only*, of such advances, *as upon which* such States "*paid or lost interest*." The words "*lost interest*" being construed, always (by the accounting officers of the Treasury), to have the meaning which was given to them in the settlement authorized by the Act March 13, 1832, passed for the benefit of South Carolina, and all subsequent Acts of similar form and purpose, to wit: moneys derived from the sale or conversion of interest-bearing securities, or withdrawn from investments which, at the time of such conversion or withdrawal, were yielding interest to the State.

The limitation sought to be fixed by said bill, on the extent to which the United States should admit and discharge her liability for interest, to the individual States so advancing her money, is derived from the *practice* of the United States in dealing with such cases in the past, more than from any obvious reasons, in justice, why interest should not be paid in all cases where such advances were *solicited* and *received* by the General Government, on the *whole* amount so advanced, at the same rate of interest which the

United States would have been obliged to pay for said moneys, had they been derived from other sources. Said rules, however, having been uniformly adopted by Congress, and accepted by the individual States from time to time for nearly sixty years, as properly measuring the liability of the United States on account of interest on similar advances, are now proposed by the States interested, as forming the correct and reasonable basis for a settlement of the claims arising under the said Reimbursement Acts of 1861 and 1862, and kindred legislation for the same general purpose.

The Reimbursement Acts last above referred to, provide, "That the Secretary of the Treasury be and he is hereby directed, out of any money in the Treasury not otherwise appropriated, to pay to the Governor of any State, or to his duly authorized agents, *cost, charges, and expenses* properly incurred by such State, for enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting its troops employed in aiding to suppress the present insurrection against the United States, to be settled upon proper vouchers, to be filed and passed upon by the proper accounting officers of the Treasury."

By the explanatory resolution, passed March 8, 1862, it is declared that the provisions of the above cited Act shall be construed as applying to such expenses incurred, as well *after* as *before* the passage of said Act. (See opinion Att'y Genl., Appendix "A.")

It is reasonable to conclude that the States making advances of money, as contemplated and authorized by said Acts of Congress, understood that they were to be reimbursed the amounts paid by them, respectively, as *interest* on the moneys so advanced (and which were, perhaps, in every instance, in great part, if not in whole, *borrowed* by them for the purpose of such advances), for it is seen that many States, upon the passage of said Acts of Congress, proceeded at once to borrow liberally on obligations of their own, and to expend the money thus obtained for the use and benefit of the United States.

The States, in making such advances and paying interest on the money advanced, did not, it is fair to assume, act on their own construction of said reimbursement Acts alone, but relied on the interpretation placed thereon by the honorable Secretary of the Treasury in his official correspondence with the Auditor of the State of Ohio, with reference to this matter of interest. Upon the subject of the liability of the General Government on account of such advances, the Hon. Salmon P. Chase, then Secretary of the Treasury, under date of July 29, 1861 (two days after the passage of said reimbursement Act), wrote as follows: "As to the 'double discount' of which you speak, if Ohio raises money by loan, at a *discount*, the United States cannot, of course, refund such *discount* to the States, *but only the amount of debt, with interest*, unless Congress specially provide otherwise." (Appendix "B" and "C.") The only reasonable construction of which language is, that the Government of the United States considered itself authorized, *without further legislation*, to pay "*the debt, with interest*." Thus, it appears, that at the time when said advances were being made, there seemed to be no doubt entertained, either on the part of the States or the Government, that the scope of the reimbursement Acts aforesaid, *then just passed*, embraced not only the moneys expended, in conformity therewith, but also the interest paid thereon.

In pursuance of this construction of said laws, the States continued to advance money, and, in presenting claims for the reimbursement of the same, accounts were presented, containing the item of "*interest paid*," which said items, however, were not allowed by the accounting officers of the Government.



In order to obtain from the Treasury Department an authoritative, and, if possible, a more favorable decision on this point, on the — day of —, 1883, the attorneys for the State of New York presented a formal demand to the honorable Secretary of the Treasury, for the amount of interest which said State claimed to have paid on money advanced for the use of the United States, as aforesaid.

The opinion of the honorable Attorney-General of the United States, as to the authority for payment of said demand without further legislation, was applied for and obtained by the Secretary of the Treasury, and, in conformity therewith, the payment demanded was declined, upon the ground that it was not *specifically authorized*.

In said opinion, however, the honorable Attorney-General, after referring to divers statutes passed by Congress to authorize, *specifically*, the payment of interest on such advances, uses the following language: "Undoubtedly, the interest paid by the State of New York on money borrowed and applied to the objects specified in the Act of July 27, 1861, forms a part of the burden borne by that State, for the general public defense, *and constitutes a just charge against the United States*; and the obligation to reimburse for payments of that kind, made under similar circumstances, has frequently been recognized by Congress, as appears by statutes above cited." (See Opinion Attorney-General, Appendix "A.")

By reason of said decision of the Secretary of the Treasury, the States interested are obliged to apply to Congress for the legislation necessary to "*expressly authorize*," and provide for, the payment of their several claims for the sums by them, respectively, expended as aforesaid. In this connection, it is thought appropriate to review briefly the various laws passed, from time to time, to provide for the payment of interest due to the different States, on advances by them made for the use of the United States, in the prosecution of all the different wars, both foreign and Indian, from the time of the last war with Great Britain in 1812 down to the date of the last Act for the benefit of the State of Maine, approved June 12, 1858, extending through a period of nearly fifty years, and embracing all legislation of this character enacted by Congress.

The first Act to provide for the payment of such interest was passed March 3, 1825, for the benefit of the State of Virginia, and its phraseology was adopted literally, except as to the names of the several beneficiaries, in the enactment of the next succeeding five Acts passed for similar purposes, and which said Acts were of the several dates and for the objects following, to wit: for the benefit of Maryland, May 13, 1826; for Delaware, May 20, 1826; for the City of Baltimore, May 20, 1826; for New York, May 22, 1826; and for Pennsylvania, March 3, 1827. (For full text of said Virginia Act, see Appendix "B.")

By reference to these last mentioned Acts it will be observed that H. B. No. 2364 is substantially a transcript of them, except that it specifies the *rate* of interest to be paid (and which rate is the same that has been paid under every Act authorizing the payment of such interest, whether specified in the Act or not), and that it further provides for payment of "interest lost," according to the meaning given to that term as used in the Act of March 13, 1832, and subsequent Acts, as aforesaid.

The Act of March 13, 1832, was the first that was passed providing for the payment to a State of any interest *except* such as the State had *actually paid*; the object of said Act, as set forth in the first section thereof, being to indemnify South Carolina for the loss of interest on money "expended for the use of the United States," etc., "the money so expended having been drawn by the State from a fund upon which she was then

*receiving interest.*" (See Appendix "E" for the first two sections of said Act.)

The provision peculiar to said last mentioned Act, and hereinabove referred to, has been reenacted in every statute of later date to provide for the payment of interest to States on advances of the character of those under consideration.

The next statute upon this subject is that of June 2, 1848, and which, being general in its nature, applied to all the States which under authority of the resolution of March 3, 1847, had furnished troops, etc., for service in the Mexican war.

This last mentioned statute so amended the said resolution of March 3, 1847, as to materially enlarge its scope as to the character of advances which might be reimbursed, and as to the sources from which they might have proceeded, as well as to the circumstances and conditions under which they might have been made. By its provision was also made for the payment of *interest* on advances made under authority of the resolution amended, and the rate fixed at six per cent per annum. Section 3 of said Act is as follows: "And be it further enacted, that in refunding moneys under this Act and the resolution which it amends, it shall be lawful to pay interest at the rate of six per centum per annum on all sums advanced by *States, corporations, or individuals* in all cases when the *State, corporation, or individual paid or lost the interest, or is liable to pay it.*" (See Appendix "F" for full text of Act.)

Thus it will be observed that under said Act, as amended, reimbursement was authorized not only of advances made by *States, or under authority of States*, but also for advances made by *counties, corporations, or individuals, either acting with or without the authority of any State.*

The same principle was observed in the Act of January 26, 1849, "*authorizing the payment of interest upon the advances made by the State of Alabama for the use of the United States Government in the suppression of the Creek Indian hostilities of eighteen hundred and thirty-six and eighteen hundred and thirty-seven, in Alabama*" (see Appendix "G"); in the Act of March 3, 1851, "*to authorize the Secretary of War to allow the payment of interest to the State of Georgia for advances made for the use of the United States in the suppression of hostilities of the Creeks, Cherokee, and Seminole Indians, etc.*" (Rev. Stat., vol. 9, p. 626), and in the Act of the same date, "*authorizing the payment of interest upon the advances made by the State of Maine for the use of the United States Government in the protection of the Northeastern frontier.*" and the language used in all three of said Acts is adopted in House Bill No. 2463.

The last mentioned Act was amended by that of August 31, 1852, which amendment extended the operation of said amended Act so as to cover interest for *other years*, as well as to those provided for originally in said Act; and, again, still further amendment was made to said Act by the Act of June 12, 1858, so that *discount suffered* as well as "*interest paid and lost*" was authorized to be paid to said State. (Rev. Stat., vol. 9, p. 626.)

From the foregoing review of the legislation on the subject of the reimbursement of advances made by the individual States for the use of the United States to aid in the public defense, it will be seen that the action of the General Government has in all such cases been just, even if sometimes tardy; and that, according to the peculiar conditions of each case, Congress has always dealt fairly and sometimes even generously with States making such advances. In no known instance has the United States refused to pay the reasonable demands of the States for such interest due them; and while she has never made any effort to narrow or restrict

the operation of laws which authorized reimbursement of moneys so advanced, on the other hand, in order to effect justice, Congress has frequently, and according to the circumstances affecting the case, amended Acts authorizing such advances, extending their scope, and liberalizing their provisions for the benefit of the States interested.

There being abundant precedent for the legislation proposed in H. B. No. 2463, and its object being obviously just, there appears no reasonable ground for objection to its present enactment. As has been shown, moneys were borrowed by the States, and by them practically loaned to the United States, under the provisions of laws which were construed by the Secretary of the Treasury, at the time such advances were being made, as covering *interest paid by the States for such moneys*. In accordance with the construction held by the interested States, of the laws under which such advances were made, demands for the interest claimed to be due them have been duly presented by such States to "the proper accounting officers of the Treasury," and payment thereof refused, not because it does not "constitute a just charge against the United States," but for want of the "specific authorization" which this bill is designed to give. Therefore there can be no relief for the States except such as Congress may give.

In conclusion, it may be stated that, first, the payment of such interest is but the discharge of an obligation which, in the language of the Attorney-General above cited, "has frequently been recognized by Congress," in fact, has been *invariably* so recognized; second, that the rules proposed for governing the computation of such interest are those which have generally been adopted by Congress in similar cases, and propose nothing to which repeated legislative sanction has not been given; and, finally, the rate of interest proposed is not only precisely that which has been authorized in every Act of this character heretofore passed by Congress; but it is the *lowest rate which was being paid by the United States* at the time such moneys were advanced for her use and benefit, and up to the time they were principally refunded, and the rate which (in addition to the discount suffered on her bonds) the Government of the United States would have been obliged to pay for said moneys had they not been so advanced by the States.

All of which is now very respectfully submitted.

JOHN MULLAN,

State Agent and Counsel for the States of California, Oregon, and Nevada.

[Copy.]

#### APPENDIX "A."

DEPARTMENT OF JUSTICE, WASHINGTON, D. C., July 23, 1883.

Hon. CHARLES J. FOLGER, *Secretary of the Treasury*:

SIR: Your letter of the seventh of June, 1882, and the papers which accompanied it, present for my consideration the following question, whether the claim of the State of New York for *interest* paid by that State on money borrowed and expended in enrolling, subsisting, clothing, etc., its troops employed to aid in the suppression of the rebellion, is within the provisions of the Act of July 27, 1861, entitled "An Act to indemnify the States for expenses incurred by them in defense of the United States." Delay in answering this question has been occasioned mainly by the demands from time to time, of other business that seemed to require immediate attention. I have now the honor to submit my views thereon:

The Act of July 27, 1861, provides: "That the Secretary of the Treasury be and is hereby directed, out of any money in the Treasury not otherwise appropriated, to pay to the Governor of any State, or to his duly authorized agents, the costs, charges, and expenses properly incurred by such State for enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting its troops employed in aiding to suppress

the present insurrection against the United States, to be settled upon proper vouchers to be filed and passed upon by the proper accounting officers of the Treasury."

By a resolution passed March 8, 1862, the above provision is to be construed to apply to expenses incurred as well after as before the date of the approval thereof.

Under this legislation, the State of New York has already been reimbursed the amount of money which was expended by it for the objects specified in the Act of 1861, exclusive of interest paid on the money so expended, all of which the State was compelled to borrow. Such interest formed an item in the account rendered by the State, but was not allowed in the adjustment thereof made at the Treasury, the accounting officers not regarding it as admissible under the statute. On the part of the State, however, it is urged that the interest mentioned properly constitutes a part of the "costs, charges, and expenses" incurred for the objects above referred to within the meaning of said Act.

According to the construction originally adopted, and thus far uniformly acted upon, in settling the claims of States under the Act of July 27, 1861, the provisions thereof extend only to such outlay by the State as were made *directly and specifically* on account of "enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting its troops," and as payments made by the State on account of interest upon a loan to it of the money thus expended, though the expenses incurred for those objects were indirectly and in a general way augmented thereby are not strictly outlays of the above character, such payments do not come within the scope of the Act.

This interpretation accords with that which prevailed in the execution of similar provisions under which States were reimbursed for advances made by them during the war of 1812, and other subsequent wars.

By the Act of April 29, 1826, chap. 160, an appropriation was made "for defraying the expenses incurred by calling out the militia, during the late war," in addition to the sums theretofore appropriated to that object, which was applied to the reimbursement of States for advances to meet such expenses. By the Act of March 3, 1817, chap. 86, an appropriation was made "for the payment of balances due to certain States on account of disbursements for militia employed in the service of the United States during the late war." And by the Act of April 20, 1818, chap. 109, an appropriation was made "for the payment of balances due several States, on an adjustment of their accounts, for expenses incurred by calling out the militia during the war." Although in each of these provisions, very general and comprehensive terms were employed, yet they were not construed to authorize the reimbursement of expenditures made by the States on account of interest, and no claims for such expenditures were allowed thereunder. Congress subsequently provided for these claims by special legislation (thus impliedly recognizing the construction given the general provisions as above), and presented certain rules for their adjustment (see Act of March 3, 1825, chap. 106, May 13, 1826, chap. 39, May 20, 1826, chap. 77, May 22, 1826, chap. 151, March 3, 1827, chap. 79, March 22, 1832, chap. 57), so by the Act of August 11, 1842, chap. 127, an amount was appropriated "to the payment and indemnity of the State of Georgia for any money actually paid by said State on account of necessary and proper expenses incurred by said State in calling out her militia," during the Seminole, Cherokee, and Creek campaigns, in the years 1835 to 1838; and by the Act of August 16, 1842, chap. 178, the Secretary was directed to audit and adjust the claims of the State of Alabama, "for moneys advanced and paid by said State for subsistence, supplies, and services of local troops called into service by and under the authorities of said States," etc., during Creek and Seminole hostilities. Under neither of these Acts were allowances made for advances on account of interest. But by Act of January 26, 1849, chap. 25, in the case of Alabama, and by Act of March 3, 1851, chap. 35, in the case of Georgia, Congress made special provision for such allowances, under rules and according to rates there prescribed.

By a resolution of Congress passed March 3, 1847, provision was made for refunding to the several States, etc., "the amount of expenses incurred by them in organizing, subsisting, and transporting volunteers previous to their being mustered and received into the service of the United States" for the Mexican war. This provision, it would seem, was not regarded as authorizing reimbursement for interest paid up on moneys expended for those purposes; since it was apparently deemed necessary, in order to authorize such reimbursements, to provide therefor by further legislation, which is found in the amendatory Act of June 2, 1848, chap. 60.

Undoubtedly, the interest paid by the State of New York on money borrowed and applied to the objects specified in the Act of July 27, 1861, forms a part of the burden borne by that State for the general public defense, and constitutes a just charge against the United States; and the obligation to reimburse for payments of that kind, made under similar circumstances, has frequently been recognized by Congress, as appears by statutes above cited. But to construe the provisions of that Act so as to include such expenditures would be giving them a meaning much broader than that which has in practice been given other legislation of like character and purpose, or that seems to be warranted by any sound rule of interpretation. When a payment from the Treasury is claimed under a statute, the payment, in order to be allowed, should appear to be authorized either expressly or by very clear implication (9 Opin., 59). The language of the Act under consideration, viewed with reference to claims based upon expenditures for interest, does not satisfy that requirement; for while no authority to reimburse the States for interest paid by them is expressly conferred thereby, such authority is not clearly to be implied therefrom. Indeed, the absence of any provision in the Act expressly authorizing reimbursement for interest rather gives rise to the implication that such reimbursement was not meant to be allowed thereunder; as in other similar cases reimbursement for interest has

generally been made the subject of express authorization where Congress intended its allowance.

I am accordingly of the opinion that the claim of the State of New York, referred to in the question submitted, does not come within the provisions of the Act of July 27, 1861.

Very respectfully, your obedient servant,

BENJAMIN HARRIS BREWSTER,  
Attorney-General.

#### APPENDIX "B."

OFFICE OF THE AUDITOR OF STATE, COLUMBUS, OHIO, July 25, 1861.

Hon. S. P. CHASE, Secretary, Washington :

SIR: Yesterday I sent you a dispatch inquiring whether Government would refund to the State a portion of the expenditures for organizing, clothing, subsisting, and equipping troops for Government service without requiring accounts to be audited and allowed, the payment to be subject to future adjustment. The Commissioners of the Sinking Fund have advertised a loan, which, or the greater part of which, may be withdrawn from market, if the Government can pay the State money on account and hereinafter pass upon items. If the accounts must first be audited and allowed the time necessary for that purpose will delay the receipt of money, and make it necessary for the State to obtain it by loan. If possible this should be avoided, and the double discount which will be inevitable, if the State borrows and then the Government to repay the State. Our loan is advertised for August seventh, in New York, at which time it will be necessary that some arrangement for money for immediate use shall have been made. If the Government can, in the way suggested, pay \$150,000 to \$200,000 per week the State can satisfy the demands upon her without being compelled to borrow, unless temporarily. In case you should be able to refund in advance of audited accounts such vouchers or acknowledgment, as you may desire, will be given. I wish, however, that it be distinctly understood that Ohio will not so press for money as in any sense to embarrass you. I know nothing about the condition of the Treasury, and must not be regarded as importuning you to do what may be inconsistent with a due regard for more pressing liabilities.

I am, very respectfully,

R. W. TAYLER, Auditor.

#### APPENDIX "C."

TREASURY DEPARTMENT, June 29, 1861.

MY DEAR SIR: Yours of the twenty-fifth, making inquiry in regard to the refunding of State expenditures for organizing, clothing, subsisting, and equipping of troops, is received. If you will accept Treasury notes in payment, the expenditures of Ohio will be paid *pro rata*, as those of Indiana have been, upon the statements of the Governor and State officers, leaving the accounts to be audited hereafter. It will be impossible to advance the coin at present. As to the "double discount" of which you speak, if Ohio raises money by loan, at a discount, the United States cannot refund such discount to the State, but only the amount of the debt with interest, unless Congress specially provide otherwise.

Yours, very truly,

S. P. CHASE.

Hon. R. W. Tayler, Auditor of the State of Ohio.

#### APPENDIX "D."

*An Act authorizing the payment of interest due to the State of Virginia.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the proper accounting officers of the Treasury Department be and they are hereby authorized and directed to liquidate and settle the claim of the State of Virginia against the United States, for interest upon loans or moneys borrowed and actually expended by her, for the use and benefit of the United States, during the late war with Great Britain.*

SEC. 2. And be it further enacted, That in ascertaining the amount of interest as aforesaid, due to the State of Virginia, the following rules shall be understood as applicable to and governing the case, to wit:

*First*—That interest shall not be computed on any sum which Virginia has not expended for the use and benefit of the United States, as evidenced by the amount refunded or repaid to Virginia by the United States.

*Second*—That no interest shall be paid on any sum on which she has not paid interest.

*Third*—That when the principal or any part of it has been paid or refunded by the United States, or money placed in the hands of Virginia for that purpose, the interest on the sum or sums so paid or refunded shall cease, and not be considered as chargeable to the United States any longer than up to the time of the repayment as aforesaid.

SEC. 3. And be it further enacted, That the amount of the interest, when ascertained as aforesaid, shall be paid out of any money in the Treasury not otherwise appropriated.

Approved March 3, 1825.

#### APPENDIX "E."

*An Act for the adjustment and settlement of the claims of the State of South Carolina against the United States.*

[Approved March 22, 1832.]

*Be it enacted by the Senate and House of Representatives of the United States, in Congress assembled, That the proper accounting officers of the Treasury be and they are hereby authorized and directed to liquidate and settle the claim of the State of South Carolina against the United States for interest upon money actually expended by her for military stores for the use and benefit of the United States, and on account of her militia whilst in the service of the United States, during the late war with Great Britain; the money so expended having been drawn by the State from a fund upon which she was then receiving interest.*

SEC. 2. And be it further enacted, That in ascertaining the amount of interest to be paid as aforesaid to the State of South Carolina, interest shall be computed upon sums expended by the State for the use and benefit of the United States, as aforesaid, and which have been, or shall be, repaid to South Carolina by the United States.

#### APPENDIX "F."

*An Act to refund money for expenses incurred, subsistence, and transportation furnished for the use of volunteers during the present war, before being mustered into the service of the United States.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the provisions of the joint resolution approved March third, eighteen hundred and forty-seven, entitled "A Resolution to refund money to the States, which have supplied volunteers and furnished them transportation, during the present war, before being mustered and received into the service of the United States," be and the same are hereby extended so as to embrace all cases of expenses heretofore incurred, in organizing, subsisting, and transporting volunteers, previous to their being mustered and received into the service of the United States, for the present war, whether by States, counties, corporations, or individuals, either acting with or without the authority of the State; provided, however, that proof shall be made, to the satisfaction of the Secretary of War, of the amount thus expended, and that the same was necessary and proper for the troops aforesaid.*

SEC. 2. And be it further enacted, That an amount sufficient to refund said expenses so incurred be and the same is hereby appropriated out of any money in the Treasury not otherwise appropriated.

SEC. 3. And be it further enacted, That in refunding moneys under this Act, and the resolution which it amends, it shall be lawful to pay interest at the rate of six per centum per annum on all sums advance [advanced] by States, corporations, or individuals, in all cases where the State, corporation, or individual paid or lost the interest, or is liable to pay it.

Approved June 2, 1848.

#### APPENDIX "G."

*An Act authorizing the payment of interest upon the advances made by the State of Alabama for the use of the United States Government in the suppression of the Creek Indian hostilities of eighteen hundred and thirty-six and eighteen hundred and thirty-seven.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of War be and he is hereby directed to pay interests upon the advances made by the State of Alabama for the use of the United States Government for the suppression of hostilities by the Creek Indians, in eighteen hundred and thirty-six and eighteen hundred and thirty-seven, at the rate of six per centum per annum from the time of the advances until the principal sum was paid by the United States to the State of Alabama; and the sum so found to be due to said State to be paid out of any money in the Treasury not otherwise appropriated.*

SEC. 2. Be it further enacted, That in ascertaining the amount of interest as aforesaid due to the State of Alabama, the following rules shall govern: That interest shall not be computed on any sum which Alabama has not expended for the use and benefit of the United States, as evidenced by the amount refunded or repaid to the State of Alabama by the United States; second, that no interest shall be paid on any sum on which the said State of Alabama did not either pay or lose interest as aforesaid.

Approved January 26, 1849.

#### APPENDIX "H."

*An Act to authorize the Secretary of War to allow the payment of interest to the State of Georgia for advances made for the use of the United States, in the suppression of the hostilities of the Creek, Seminole, and Cherokee Indians, in the years of eighteen hundred and thirty-six, eighteen hundred and thirty-seven, and eighteen hundred and thirty-eight.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of War be and he is hereby authorized to allow to the State of Georgia, for advances made to the United States for the suppression of the hostilities of the Creek, Seminole, and Cherokee Indians, in the years of eighteen hundred*

and thirty-five, eighteen hundred and thirty-six, eighteen hundred and thirty-seven, and eighteen hundred and thirty-eight, interest at the rate of six per cent per annum upon all sums allowed and paid to the State of Georgia, or that may hereafter be allowed and paid for any moneys advanced by the State for the purpose aforesaid, from the date of such advances until the principal sum or sums were or may be paid by the United States; provided, that no interest shall be paid on any sum on which the said State of Georgia did not either pay or lose interest.

Approved March 3, 1851.

#### APPENDIX "I."

*An Act authorizing the payment of interest upon the advances made by the State of Maine for the use of the United States Government, in the protection of the northeastern frontier.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the proper accounting officers of the Treasury be and they are hereby authorized and directed to liquidate and settle the claim of the State of Maine against the United States for interest upon money borrowed and actually expended by her for the protection of the northeastern frontier of said State, during the years eighteen hundred and thirty-nine, eighteen hundred and forty, and eighteen hundred and forty-one; and the sum so found to be due said State shall be paid out of any money in the Treasury not otherwise appropriated.

SEC. 2. And be it further enacted, That in ascertaining the amount of interest as aforesaid due to the State of Maine, the following rules shall govern: First, that interest shall not be computed on any sum which Maine has not expended for the use and benefit of the United States, as evidenced by the amount refunded or repaid to the State of Maine by the United States; second, that no interest shall be paid on any sum on which the said State of Maine did not either pay or lose interest, as aforesaid.

Approved March 3, 1851.

#### APPENDIX "K."

That the foregoing brief and well authenticated statement forms the basis of the State's claim to be reimbursed for interest, and that it is a claim such as the Government of the United States has ever *acknowledged* and *paid*, will appear from the following opinions of Attorneys-General and abundant precedents in Acts of Congress.

Attorney-General Wirt, in construing the Act authorizing the payment of interest to the State of Virginia (Act of March 3, 1825, Stats. at Large, vol. 4, page 132), says:

"The principle is this: The United States are bound by the relations that subsist between the General and State Governments to provide the means of carrying on war, and as a part of the means of carrying on war, to provide for the defense of the several States. When the United States fail to make such provision, and the States have to defend themselves by means of their own resources, the expenditure thus incurred forms a debt against the United States, which they are bound to reimburse. If the expenditures made for such purposes are supplied from the Treasury of the State, the United States reimburse the principal without interest; but if, being unable itself, from the condition of its own finances, to meet the emergency, such State has been obliged to borrow money for the purpose, and thus to incur a debt on which she herself has had to pay interest, such debt is essentially a debt due by the United States, and both the principal and interest are to be paid by the United States. So that where the State has had to pay interest by reason of her taking the place of the United States in time of war, such interest forms a just charge against the United States." (Opinions of Attorneys-General, vol. 1, page 174.)

Attorney-General Crittenden, in an opinion to the Secretary of War, dated November 17, 1851, as to the question of interest under the Act of February 27, 1851 (Statutes at Large, vol. 9, page 573), "for reimbursing the State of Florida," etc., says:

"Your second question relates to interest which 'the accounting officers decline to allow on the moneys advanced and obligations contracted,' although the State of Florida borrowed the money and paid interest thereon.

"The question turns upon the true meaning and intention of the Legislature, to be collected from the words of the appropriation of \$75,000, 'for reimbursing the State of Florida under such rules and regulations as have heretofore governed the adjustment of similar claims of the several States on the United States, for moneys advanced and paid, and obligations contracted by said State, for subsistence, supplies, and services of local troops called into service during the year 1849, by and under the authorities of said State.'

"Florida is to be reimbursed for moneys advanced and paid, for expenses incurred and obligations contracted on account of supplies, pay, and subsistence of local troops called into service by the State of Florida in 1849. That reimbursement is to be made under the rules which governed the adjustment of similar claims of the several States against the United States.

"By an Act approved May 13, 1826 (4 Statutes at Large, page 161, chapter 39), the proper accounting officers of the Treasury are directed to liquidate and settle the claims of the State of Maryland against the United States upon interest of loans of money borrowed and actually expended by her for the use and benefit of the United States during the late war with Great Britain.

"SEC. 2. That in ascertaining the amount of interest as aforesaid the following rules shall be understood as applicable to, and governing the case, to wit:

"First—That interest shall not be computed on any sum that Maryland has not expended for the use and benefit of the United States.

"Second—That no interest shall be paid on any sums on which she has not paid interest.

"Third—That when the principal, or any part of it, has been refunded by the United States, or money placed in the hands of Maryland for that purpose, the interest on the sum or sums so refunded shall cease and not be considered as chargeable to the United States any longer than up to the time of repayment as aforesaid.

"Act of March 22, 1832 (4 Stats. at Large, page 499, chap. 51) directed the proper accounting officers 'to liquidate and settle the claims of the State of South Carolina against the United States for interest upon money actually expended by her for military stores for the use and benefit of the United States during the late war with Great Britain, the money so expended having been drawn by the State from a fund upon which she was then receiving interest.

"SEC. 2. That in ascertaining the amount of interest to be paid as aforesaid to the State of South Carolina, interest shall be computed on the sums expended by the State for the use and benefit of the United States, and which have been, or shall be, repaid to South Carolina by the United States.'

"By 'An Act to refund money for expenses incurred, subsistence, or transportation furnished for the use of volunteers during the present war before being mustered into the service of the United States,' approved June 2, 1848 (9 Stats. at Large, page 236, chap. 60), it was enacted in Section 3 'that in refunding money under this Act it shall be lawful to pay interest at the rate of six per centum per annum on all sums advanced by States, corporations, or individuals, in all cases where the State, corporation, or individual has paid or lost interest, or is liable to pay it.'

"An Act approved January 26, 1849 (Statutes at Large, vol. 9, page 344, chapter 25), directed the Secretary of War to pay to the State of Alabama interest upon the advances made by the State of Alabama for the use of the United States in the suppression of Indian hostilities by the Creek Indians in 1836 and 1837, 'at the rate of six per centum per annum from the time of the advance until the principal sum was paid by the United States to the State of Alabama. That no interest shall be paid on any sum on which the State of Alabama did not pay or lose interest.'

The Act of twenty-seventh February, 1861, is intended to indemnify the State against loss or damage. Reimbursing means repairing the loss or expenses by an equivalent.

If the State of Florida has contracted obligations bearing interest, or has paid money, with interest, for the use and benefit, in necessary and proper supplies for the troops called into service in 1849, to refund to the State of Florida the principal sum only, without the interest, would not reimburse the State, would not save the State from loss and damage, would not be an equivalent for the expense the State has incurred for the United States.

Moreover, the statute expressly refers to what had been done by the United States for other States in like circumstances.

The before mentioned statute shows the rules which have heretofore governed the adjustment of similar claims upon the United States. The Acts before cited, and particularly that of the second June, 1848, which was a general one, embracing the claims of many States, corporations, and individuals, then to be adjusted, directed that an interest, at the rate of six per cent per annum, be allowed "on all sums advanced by States, corporations, or individuals, when the State, corporation, or individual has paid or lost interest, or is liable to pay it." (Statutes at Large, 1848, vol. 9, page 236, chapter 60.)

From the beginning of the Government under the Federal Constitution, the public defense, in whole and in all its parts, has been considered as a duty and charge upon the Federal Government. In the adjustment at the Treasury Department of the claims of the several States, for advances, expenditures, and supplies necessary for troops in the exigencies of war, or the suppression of Indian hostilities, there is no public policy, no saving to the public Treasury, no virtue, no laudable end consulted in order to cut down the claims of the several States, in opposition to the intention of Congress and the good faith of the Government, thereby to send the State to Congress to ask further relief by further legislation.

There is no just cause for not allowing to the State of Florida an interest upon all sums advanced, paid out, and expended for the use of the United States, and obligations by that State contracted for supplies and services of local troops called into service in 1849, by and under authority of said State, when it shall appear that said State has paid or lost interest, or is liable to pay interest on that account.

Interest has always been allowed to the several States for advances made to the United States for military purposes.

The claims of the several States for advances made during the revolutionary war were adjusted and settled under the provisions of the Acts of Congress of August 5, 1790, and of May 31, 1794. By these Acts interest was allowed to the States, whether they had advanced money on hand in their treasuries or obtained it by loans.

In respect to the advances by States during the war of 1812-15, a more restricted rule was adopted, to wit: that States should be allowed interest only so far as they themselves had paid it by borrowing, or had lost it by sale of interest-bearing funds. Interest according to this last rule has been paid to all the States which made advances during the war of 1812-15, except the State of Massachusetts, which State obtained interest according to the plan of settlement under the Acts of 1790-94.

We cite the cases where interest has been allowed and paid for moneys advanced during the war of 1812-15, as follows:

Virginia, Act March 3, 1825, 4 Stats. at Large, p. 132.  
Maryland, Act May 13, 1826, 4 Stats. at Large, page 151.  
Delaware, Act May 20, 1826, 4 Stats. at Large, p. 175.  
New York, Act May 22, 1826, 4 Stats. at Large, p. 192.  
Pennsylvania, Act March 3, 1827, 4 Stats. at Large, p. 241.  
South Carolina, Act March 22, 1832, 4 Stats. at Large, p. 499.  
Massachusetts, Act July 8, 1870, 16 Stats. at Large, p. 198.

For advances for Indian and other wars the same rule has been observed in the following cases:

Alabama, Act January 26, 1849, 9 Stats. at Large, p. 344.  
Georgia, Act March 31, 1851, 9 Stats. at Large, p. 626.  
Washington Territory, Act March 3, 1859, 11 Stats. at Large, p. 429.  
New Hampshire, Act January 27, 1852, 10 Stats. at Large, p. 1.

For claims growing out of the war with Mexico, it was enacted (Act June 2, 1848, 9 Stats. at Large, p. 236, chap. 60, Sec. 3), that in *refunding* money under this Act it shall be lawful to pay interest at the rate of six per centum per annum on all sums advanced by States, corporations, or individuals, in all cases where the State, corporation, or individual has paid or lost interest, or is liable to pay it.

Thus, it will be seen, that the precedent for the payment of interest under the rule adopted for the settlement of claims of the war of 1812-15, is well established.

Florida asks no new rule. She asks only to be placed on an equal footing with her sister States—to be reimbursed for interest she has actually paid, and is now paying. The Indian Trust Fund of the United States now holds seven per cent bonds of the State of Florida amounting, principal and interest, to about *three hundred thousand dollars*, of which about *one hundred and seventy thousand dollars* is interest. The State expects of course to take up this debt in the settlement she now desires to make with the United States.

#### MARYLAND.

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the proper accounting officers of the Treasury Department be and they are hereby authorized and directed to liquidate and settle the claim of the State of Maryland against the United States, for interest upon loans on moneys borrowed, and actually expended by her, for the use and the benefit of the United States, during the late-war with Great Britain.*

SEC. 2. And be it further enacted, That, in ascertaining the amount of interest as aforesaid, due to the State of Maryland, the following rules shall be understood as applicable to, and governing the case, to wit:

*First*—That interest shall not be computed on any sum which Maryland has not expended for the use and benefit of the United States, as evidenced by the amount refunded or repaid to Maryland, by the United States.

*Second*—That no interest shall be paid on any sum on which she has not paid interest.

*Third*—That when the principal, or any part of it, has been paid, or refunded by the United States, or money placed in the hands of Maryland, for that purpose, the interest on the sum or sums so paid or refunded, shall cease, and not be considered as chargeable to the United States, any longer than up to the time of the repayment, as aforesaid.

SEC. 3. And be it further enacted, That the amount of the interest, when ascertained, as aforesaid, shall be paid out of any money in the Treasury not otherwise appropriated. Approved May 13, 1826.

#### DELAWARE.

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the proper accounting officers of the Treasury Department, be and they are hereby authorized and directed to liquidate and settle the claim of the State of Delaware against the United States, for interest upon loans or moneys borrowed, and actually expended by her, for the use and benefit of the United States during the late war with Great Britain.*

SEC. 2. And be it further enacted, That in ascertaining the amount of interest as aforesaid, due to the State of Delaware, the following rules shall be understood as applicable to and governing the case, to wit:

*First*—That interest shall not be computed on any sum which Delaware has not expended for the use and benefit of the United States, as evidenced by the amount refunded or repaid to Delaware by the United States.

*Second*—That no interest shall be paid on any sum on which she has not paid interest.

*Third*—That when the principal, or any part of it, has been paid or refunded by the United States, or moneys placed in the hands of Delaware for that purpose, the interest on the sum or sums so paid or refunded shall cease and not be considered as chargeable to the United States, any longer than up to the time of the repayment as aforesaid.

SEC. 3. And be it further enacted, That the amount of the interest, when ascertained as aforesaid, shall be paid out of any money in the Treasury not otherwise appropriated. Approved May 20, 1826.

#### NEW YORK.

*Be it enacted by the Senate and House of Representatives of the United States of America, in*

*Congress assembled, That the proper accounting officers of the Treasury Department be and they are hereby authorized and directed to liquidate and settle the claim of the State of New York against the United States, for interest upon loans on moneys borrowed and actually expended by her for the use and benefit of the United States during the late war with Great Britain.*

SEC. 2. And be it further enacted, That in ascertaining the amount of interest as aforesaid due to the State of New York, the following rules shall be understood as applicable to and governing the case, to wit:

*First*—That interest shall not be computed on any sum which New York has not expended for the use and benefit of the United States, as evidenced by the amount refunded or repaid to New York by the United States.

*Second*—That no interest shall be paid on any sum on which she has not paid interest.

*Third*—That when the principal, or any part of it, has been paid or refunded by the United States, or money placed in the hands of New York for that purpose, the interest on the sum or sums so paid or refunded shall cease and not be considered as chargeable to the United States any longer than up to the time of the repayment as aforesaid.

SEC. 3. And be it further enacted, That the amount of the interest, when ascertained as aforesaid, shall be paid out of any money in the Treasury not otherwise appropriated. Approved May 22, 1826.

#### PENNSYLVANIA.

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the proper accounting officers of the Treasury Department be and they are hereby authorized and directed to liquidate and settle the claim of the State of Pennsylvania against the United States, for interest upon loans or moneys borrowed and actually expended by her for the use and benefit of the United States during the late war with Great Britain.*

SEC. 2. And be it further enacted, That, in ascertaining the amount of interest as aforesaid due to the State of Pennsylvania, the following rules shall be understood as applicable to and governing the case, to wit:

*First*—That interest shall not be computed on any sum which Pennsylvania has not expended for the use and benefit of the United States, as evidenced by the amount refunded or repaid to Pennsylvania by the United States.

*Second*—That no interest shall be paid on any sum on which she has not paid interest.

*Third*—That when the principal, or any part of it, has been paid or refunded by the United States, or money placed in the hands of Pennsylvania for that purpose, the interest on the sum or sums so paid or refunded shall cease, and not be considered as chargeable to the United States any longer than up to the time of the repayment as aforesaid.

SEC. 3. And be it further enacted, That the amount of the interest, when ascertained as aforesaid, shall be paid out of any money in the Treasury not otherwise appropriated. Approved March 3, 1827.

#### MASSACHUSETTS.

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That there be allowed on the claim of the State of Massachusetts, for interest paid by her on money expended by said State on account of the war with Great Britain in eighteen hundred and twelve to eighteen hundred and fifteen, the sum of six hundred and seventy-eight thousand three hundred and sixty-two dollars and forty-one cents, in full of said claim.*

#### WASHINGTON TERRITORY.

To enable the Secretary of War to pay for the purchase of stores furnished for the use of volunteers engaged in suppressing Indian hostilities in the Territory of Washington during the late Indian hostilities in that Territory, seven thousand dollars, with interest from the time the money was advanced by Governor Douglas for said purchase.

#### NEW HAMPSHIRE.

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Second Auditor of the Treasury be and he is hereby authorized and directed to liquidate and settle the claim of the State of New Hampshire against the United States, for interest upon the military expenses incurred and actually expended by her for the protection of the northeastern frontier of said State, and repelling invasion and suppressing insurrection at Indian Stream, in the county of Coos, in said State, in the years eighteen hundred and thirty-five, eighteen hundred and thirty-six, and eighteen hundred and thirty-seven; and the sum so found to be due to said State, shall be paid out of any money in the Treasury not otherwise appropriated; provided, that said amount shall not exceed six thousand dollars.*

SEC. 2. And be it further enacted, that, in ascertaining the amount of interest, as aforesaid, due to the State of New Hampshire, the following rules shall govern:

*First*—That interest shall not be computed on any sum which New Hampshire has not expended for the use and benefit of the United States, as evidenced by the amount refunded or repaid to the State of New Hampshire.

*Second*—That interest shall not be paid during any time, on any sum larger than the sum the State was paying interest for at such time.

Approved January 27, 1852.



**EXHIBIT No. 5½.**

Forty-eighth Congress, first session. Senate 320 and H. R. 109.

*To the honorable Committee on Claims, United States Senate, and to the honorable Committee on War Claims, United States House of Representatives:*

Senate Bill No. 320, introduced in the Senate by Senator Miller of California, December 5, 1883, and referred to the honorable Committee on Claims, and H. R. 109, introduced by Mr. Henley of California, in the House on December 10, 1883, and referred to the honorable Committee on War Claims for action and report, is as follows, to wit:

**A BILL**

*Authorizing the payment of interest due to the States of California, Oregon, and Nevada, and Nevada when a Territory.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the proper accounting officers of the Treasury Department be and they are hereby authorized and directed to liquidate and settle the claims of the States of California, Oregon, and Nevada (and Nevada when a Territory) against the United States for interest upon loans or moneys borrowed and actually expended by them for the use and benefit of the United States during the late war for suppressing insurrection and rebellion, and also on account of Indian hostilities in said States and Territory.

SEC. 2. That in ascertaining the amounts of interest as aforesaid due the States of California, Oregon, and Nevada (and Nevada when a Territory), the following rules shall be understood as applicable to and governing the cases, to wit:

*First*—That interest shall not be computed on any sums which California, Oregon, and Nevada (and Nevada when a Territory) have not expended for the use and benefit of the United States, as evidenced by the amounts refunded or repaid, or to be refunded or to be repaid to California, Oregon, and Nevada (and Nevada when a Territory) by the United States.

*Second*—That no interest shall be paid on any sums on which they have not paid interest.

*Third*—That when the principal, or any part of it, has been paid or refunded by the United States, or money placed in the hands of California, Oregon, and Nevada (and Nevada when a Territory) for that purpose, the interest on the sum or sums so paid or refunded shall cease, and not be considered as chargeable to the United States any longer than up to the time of the repayment as aforesaid.

SEC. 3. That the amounts of interest, when ascertained as aforesaid, shall be paid out of any money in the Treasury not otherwise appropriated.

The object of these bills, as their language plainly imports, is to provide for the payment of interest by the United States to the States of California, Oregon, and Nevada (and Nevada when a Territory), *not* upon the *whole* amount of their respective advances to the United States for the purposes mentioned, but on *that part only* of such advances *upon which* such States "paid interest."

The limitation sought to be fixed by said bills on the extent to which the United States should admit and discharge her liability for interest to these States so advancing her money is derived from the *practice* of the United States in dealing with similar cases in the past.

Said practice, having been uniformly adopted by Congress and accepted by the individual States from time to time for nearly sixty years, properly measures the liability of the United States on account of interest on similar advances now proposed by these States, and forms the correct and reasonable basis for a settlement of the claims arising under this proposed legislation.

The reimbursement Acts of 1861 and 1862 provided "that the Secretary of the Treasury be and he is hereby directed, out of any money in the Treasury not otherwise appropriated, to pay to the Governor of any State, or to

his duly authorized agents, the *costs, charges, and expenses* properly incurred by such States for enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting its troops employed in aiding to suppress the present insurrection against the United States, to be settled upon proper vouchers, to be filed and passed upon by the proper accounting officers of the Treasury."

By the resolution passed March 8, 1862, it was declared that the provisions of the above cited Act shall be construed as applying to such expenses incurred *as well after as before* the passage of said Act.

It is reasonable to conclude that these States making advances of money, as contemplated and authorized by said Acts of Congress, understood that they were to be reimbursed the amounts paid by them, respectively, *as interest* on the moneys so advanced (and which were, in great part, borrowed by them for the purpose of such advances), for it is seen that many States, upon the passage of said Acts of Congress, proceeded at once to borrow on obligations of their own, and to expend the money thus obtained for the use and benefit of the United States.

These States, in making such advances and paying interest on the money advanced, did not act on their own construction of said reimbursement Acts alone, but relied on the interpretation placed thereon by the honorable Secretary of the Treasury in his official correspondence with the Auditor of the State of Ohio with reference to this matter of interest. Upon the subject of the liability of the General Government on account of such advances, the Hon. Salmon P. Chase, then Secretary of the Treasury, under date of July 29, 1861 (two days after the passage of said reimbursement Act), wrote as follows: "As to the 'double discount' of which you speak, if Ohio raised money by loan at a *discount*, the United States cannot, of course, refund such discount to the States, *but only the amount of debt, with interest*, unless Congress specially provide otherwise."

The only reasonable construction of this language is that the Government of the United States considered itself authorized, *without further legislation, to pay "the debt with interest."*

Thus it appears that at the time when said advances were being made, there seemed to be no doubt entertained, either on the part of these States or the Federal Government, that the scope of the reimbursement Acts aforesaid, *then just passed*, embraced not only the moneys expended in conformity therewith, but also the interest paid thereon.

In pursuance of this construction of said laws, these States continued to advance money, and in presenting claims for the reimbursement of the same, accounts containing the item of "*interest paid*" will not be allowed by the accounting officers of the Government.

In order to obtain from the Treasury Department an authoritative and, if possible, a more favorable decision on this point, on the seventh day of June, 1882, the attorneys for the State of New York presented a formal demand to the honorable Secretary of the Treasury for the amount of interest which said State claimed to have paid on money advanced for the use of the United States as aforesaid.

And this question, on said date, was referred by the Secretary of the Treasury to the United States Attorney-General for an opinion.

The opinion of the honorable Attorney-General of the United States as to the authority for the payment of said demand without further legislation was obtained by the Secretary of the Treasury, and in conformity therewith the payment demanded was declined, upon the ground that it was not *specifically authorized*.

In said opinion, however, the honorable Attorney-General, after referring



to divers statutes passed by Congress to authorize *specifically* the payment of interest on such advances, uses the following language:

Undoubtedly the interest paid by the State of New York on money borrowed and applied to the objects specified in the Act of July 27, 1861, forms part of the burden borne by that State for the general public defense, and constitutes a just charge against the United States; and the obligation to reimburse for payments of that kind, made under similar circumstances, has frequently been recognized by Congress, as appears by statutes above cited.

By reason of said decision of the Secretary of the Treasury, these States are obliged to apply to Congress for the legislation necessary to "*expressly authorize*" and provide for the payment of their several claims for the sums by them respectively expended as aforesaid. In this connection we pass in review, briefly, the various laws enacted from time to time to provide for the payment of interest due to the different States, or advances by them made for the use of the United States in the prosecution of all the different wars, both foreign and Indian, from the time of the war with Great Britain in 1812 down to date.

Congress has universally paid interest to the States where they have paid interest. We cite the cases where interest has been allowed and paid for moneys advanced during the war of 1812-15, as follows:

The first Act to provide for the payment of such interest was passed March 3, 1825 (U. S. Stat., vol. 4, p. 132), for the benefit of the State of Virginia; next for the benefit of Maryland, May 13, 1826 (U. S. Stat., vol. 4, p. 161); then for Delaware, May 20, 1826 (U. S. Stat., vol. 4, p. 175); then for the City of Baltimore, May 20, 1826 (U. S. Stat., vol. 4, p. 177); then for New York, May 22, 1826 (U. S. Stat., vol. 4, p. 192); and then for Pennsylvania, March 3, 1827 (U. S. Stat., vol. 4, p. 240); next for South Carolina, Act March 22, 1832 (U. S. Stat., vol. 4, p. 499); next Massachusetts and Maine, July 8, 1870 (U. S. Stat., vol. 16, p. 199).

For advances for Indian and other wars the same rule has been observed in the following cases: Alabama, Act January 26, 1849 (4 Stat. at L., p. 344); Georgia, Act March 31, 1851 (9 Stat. at L., p. 626); Georgia, Act March 3, 1879 (20 Stat. at L., p. 385); Washington Territory, Act March 3, 1859 (11 Stat. at L., p. 429); New Hampshire, Act January 27, 1852 (10 Stat. at L., p. 1).

By reference to these Acts it will be observed that Senate No. 320 and H. R. No. 109 are substantially a transcript of them.

The Act of March 22, 1832 (U. S. Stat., vol. 4), was the first that was passed providing for the payment to a State of any interest, *except* such as the State had *actually paid*; the object of said Act, as set forth in the first section thereof, being to indemnify South Carolina for the loss of interest on money "expended for the use of the United States, etc.; the money so expended having been drawn by the State from a fund upon which she was then receiving interest."

The provision peculiar to said last mentioned Act, and hereinbefore referred to, has been reenacted in every statute of later date to provide for the payment of interest to States on advances of the character of those under consideration.

The next statute upon this subject is that of June 2, 1848 (U. S. Stat., vol. 9, p. 236), and which, being general in its nature, applied to all the States which under authority of the resolution of March 3, 1847 (U. S. Stat., vol. 9, p. 207), had furnished troops, etc., for service in the Mexican war.

The last mentioned statute so amended the said resolution of March 3, 1847, as to materially enlarge its scope as to the character of advances which might be reimbursed, and as to the sources from which they might

have proceeded, as well as to the circumstances and conditions under which they might have been made. By it provision was also made for the payment of interest on advances made under authority of the resolution amended, and the rate fixed at six per cent per annum.

Section 3 of said Act is as follows:

And be it further enacted, That in refunding moneys under this Act and the resolution which it amends, it shall be lawful to pay interest at the rate of six per centum per annum on all sums advanced by States, corporations, or individuals, in all cases when the State, corporation, or individual paid or lost interest or is liable to pay it.

Thus, it will be observed, that under said Act, as amended, reimbursement was authorized, not only of advances made by States or under authority of States, but also advances by counties, corporations, or individuals, either acting with or without the authority of any State.

The same principle was observed in the Act of January 26, 1849 (U. S. Stat., vol. 9, p. 344), "*Authorizing the payment of interest upon the advances made by the State of Alabama for the use of the United States Government in the suppression of the Creek Indian hostilities of eighteen hundred and thirty-six and eighteen hundred and thirty-seven, in Alabama.*"

In the Act of March 3, 1851 (U. S. Stat., vol. 9, p. 626), "*To authorize the Secretary of War to allow the payment of interest to the State of Georgia for advances made for the use of the United States in the suppression of hostilities of the Creeks, Cherokee, and Seminole Indians.*"

And in the Act of the same date, "*Authorizing the payment of interest upon the advances made by the State of Maine, for the use of the United States Government in the protection of the northeastern frontier.*" (U. S. Stat., vol. 9, p. 626.)

The language used in all three of said Acts is adopted in Senate Bill No. 320, and in House Bill No. 109.

The last mentioned Act was amended by that of August 31, 1852 (U. S. Stat., vol. 9, p. 109), which amendment extended the operation of said amended Act so as to cover interest for other years, as well as to those provided for originally in said Act; and again, still further amendment was made to said Act by the Act of June 12, 1858 (U. S. Stat., vol. 11, p. 333), so that discount suffered, as well as "*interest paid and lost,*" was authorized to be paid to said State (U. S. Stat., vol. 9, p. 126); so, too, as late as July 8, 1870, Congress (U. S. Stat., vol. 16, p. 197) provided for refunding to the State of Massachusetts the sum of \$678,362, for interest paid by said State on money expended by her in 1812 to 1815, one third of which was allowed to the State of Maine, and remaining two thirds was allowed to the State of Massachusetts.

From the foregoing review of the legislation on the subject of the reimbursement of advances made by the individual States for the use of the United States, to aid in the public defense, it will be seen that the action of the General Government has, in all such cases, been uniform and just, though sometimes tardy; and, according to the peculiar conditions of each case, Congress has always dealt fairly, and sometimes even generously, with those States making such advances. In no instance has the United States refused to pay the reasonable demands of the States for such interest due them; and while she has never made any effort to narrow or restrict the operation of laws which authorize reimbursement of moneys so advanced, on the other hand, in order to effect justice, Congress has frequently, and according to the circumstances affecting the case, amended Acts authorizing such advances, extending their scope, and liberalizing their provisions for the benefit of the specific States interested. There being abundant

precedent for the legislation proposed in Senate No. 320 and in H. R. No. 109, and its object being obviously just, there appears no reasonable ground for objection to its present enactment in this case. Moneys were borrowed by these States, and by them practically loaned to the United States; under the provisions of laws which, in the instances cited, were construed by the Secretary of the Treasury, at the time such advances were being made, as covering *interest paid by the States for such moneys*. In accordance with the construction held by these States of the laws under which such advances were made, demands for the interest claimed to be due them will be refused payment, not because it did not "constitute a just charge against the United States," but for want of the "specific authorization" which this bill is designed to give. Therefore, there can be no relief for these States except such as Congress may enact. The payment of such interest will be—first, the discharge of an obligation which, in the language of the Attorney-General, above cited, has "*frequently been recognized by Congress*," in fact has been *invariably* so recognized; and, second, that the rules proposed for governing the computation of such interest are those which have generally been adopted by Congress in similar cases, and proposes nothing to which legislative sanction has not been frequently heretofore given. Nor is there, nor can there possibly be, any distinction or discrimination in principle made by Congress between those States which made advances out of their own Treasury in the foreign wars between the United States and Mexico in 1846 and 1847, and with Great Britain in 1812 and 1815, and during the civil war of 1861 and 1865, and those States which advanced money and assumed an indebtedness in repelling Indian invasion and suppressing Indian hostilities within their own respective borders.

Congress has never yet drawn any distinction between such States when refunding either the principal or the interest in any such cases. That the protection of the several States, and the citizens thereof, from Indian hostilities is, and has been from the organization of the Federal Government, a duty and a charge incumbent on the United States, and when, in the absence of such protection, the States themselves have made necessary expenditures for this purpose they should be reimbursed, are principles well founded in law and justice, and fully sanctioned by an unbroken line of precedents.

Congress has ever recognized its obligations to refund to the several States this class of debts, as shown by the instances hereinbefore referred to, as well as in the other instances that may be cited as follows, to wit:

By Act approved March 21, 1828, the Secretary of War was required to pay the claims of the militia of the State of Illinois and the Territory of Michigan, called out by any competent authority, on the occasion of the then recent Indian disturbances, and that the expenses incident to the expedition should be settled according to the justice of the claims. (See Laws of United States, vol. 4, p. 258.)

By Act approved July 2, 1836, Captains Smith, Crawford, Wallis, and Long of the militia of Missouri, and Captain Sigler of the Indiana militia, were paid for services rendered in protection of those States against Indians, and an appropriation of \$4,300 was made for that purpose. (See U. S. Stats., p. 71.)

By Act approved March 1, 1837, an appropriation was made for the payment of the Tennessee volunteers called out by the proclamation of Governor Cannon on the twenty-eighth of April, 1836, to suppress Indian hostilities; and a direct appropriation was also made to Governor Cannon to reimburse him for moneys expended on account of such volunteers. (See Laws of United States, vol. 5, p. 150.)

By Act approved July 7, 1838, an appropriation was made to the State of New York of such amount as should be found due by the Secretary of War and the accounting officers of the Treasury, out of the appropriation for the prevention of hostilities on the northern frontier, to reimburse the State for expenses incurred in the protection of the frontier to the pay of volunteers and militia called into service by the Governor. (See 5 U. S. Stats., p. 268.)

By Act approved March 3, 1841, a direct appropriation was made to the City of Mobile for advances of money and expenses incurred in equipping, mounting, and sending to the place of rendezvous two full companies of mounted men, under a call from the Governor of Alabama, at the beginning of the hostilities of the Creek Indians. (See Laws, vol. 5, p. 435.)

By an Act approved June 14, 1842, the State of Maine was reimbursed for the expenses of the militia, called into service by the Governor for the protection of the northeastern frontier. (See 5 U. S. Stats., p. 490.)

By Act of August 11, 1842, \$175,000 was appropriated as a balance for the payment and indemnity of the State of Georgia, for any moneys actually paid by said State on account of expenses in calling out her militia during the Seminole, Cherokee, and Creek campaigns, or for the suppression of Indian hostilities in Florida and Alabama. (See Laws, vol. 5, p. 504.) By Act approved August 29, 1842, a similar appropriation was made to the State of Louisiana. (See Laws, vol. 5, p. 542.)

There was appropriated to the State of California, by Act approved August 5, 1854, the sum of \$924,259 65, to reimburse the State for expenditures "in the suppression of Indian hostilities within the State prior to the first day of January, 1854." (See U. S. Stats. at Large, vol. 10, p. 583.)

Mr. McDougal, from the House Committee on Military Affairs, which had the bill making said appropriation referred to it, made a report, in which it is said:

The question remaining for consideration is whether or not the General Government is properly chargeable with their expenditures.

It is the opinion of this committee that the obligation of the Federal Government to furnish specific and particular defense to each several State is included in its obligation to maintain the "common defense" of the Confederacy. That invasions from abroad, insurrections at home, and aggressions from the savage tribes inhabiting our borders are alike within the protective province of the Federal Government. Congress possesses the exclusive power "to raise and support armies in time of peace," and possesses the power to call forth the militia "to suppress insurrections and repel invasions." In the tenth section of the first article of the Constitution the States stipulate that they will not "keep troops or ships of war in time of peace."

The conclusion necessarily follows that the General Government is, by the implied, if not by the express terms of the Federal compact, bound to furnish and maintain such military force as the exigencies of the States may demand; and it clearly appears, from the legislative history of Congress, that such has always been the understanding of the Government.

The question here presented appears to have been distinctly raised in 1831, upon a claim presented by the State of Missouri. By Act approved March third, of that year, Congress made an appropriation for the service of the Missouri militia against the Indians, "provided that the Secretary of War shall, upon full investigation, be satisfied that the United States are liable for the payment of said militia, under the second paragraph of the tenth section of the first article of the Constitution of the United States." See U. S. Stats., vol. 4, p. 465.)

General Cass, then Secretary of War, examined the subject submitted, and gave the opinion of the Government as to its constitutional obligations, affirming the liability of the Government, and directing payment to be made to the State of Missouri.

Instances of similar legislation might be cited, but it is believed that but little doubt can exist either as to the constitutional obligation or the exposition given by Congressional legislation.

By the Act approved June 21, 1860 (it being an army appropriation bill), the sum of \$18,988 was appropriated to reimburse the State of Iowa

for the expenses of militia called out by the Governor "to protect the frontier from Indian incursions." (See 12 U. S. Stats., p. 68.)

By the same Act the sum of \$123,544 51 was appropriated to the State of Texas for the "payment of volunteers called out in the defense of the frontier of the State since the twenty-eighth of February, 1855."

By Act approved February 27, 1861, there was appropriated to reimburse the Territory of Utah "for expenses incurred in suppressing Indian hostilities in said Territory in the year 1853" the sum of \$53,512. (See 12 U. S. Stats., p. 151.) This bill was considered by the House Military Committee, and was reported by Mr. Stanton, who, in his report, says:

The liability of the Federal Government for necessary expenses incurred by the States and Territories in repelling invasions of their territory by a foreign enemy, or of hostile tribes of Indians within our borders, has been so often recognized that it can no longer be considered an open question.

The committee also believe that the action of the State and Territorial authorities in calling out their military force and engaging in hostilities furnished at least *prima facie* evidence of the necessity of their action.

As there is no evidence before the committee tending to show that these expenses were unnecessarily incurred, the committee feel bound to recognize the liability of the claim.

By Act approved March 21, 1861, the State of California had appropriated to her \$400,000, of which, on June 25, 1863, \$229,981 67 was paid *on account* to defray the expenses incurred by the State in suppressing Indian hostilities for the years 1854, 1855, 1856, 1858, and 1859. (See 12 U. S. Stats., p. 199.)

Mr. Stanton, from the House Committee on Military Affairs, June 22, 1860, reported this bill, and in his report says:

The liability of the Federal Government to indemnify a State or Territory for expenses necessarily incurred in protecting their citizens against a public enemy in their own midst, has been repeatedly, if not uniformly, recognized by Congress. Your committee, however, are of opinion that before the Federal Government should assume liabilities of this character it ought to be satisfactorily shown not only that a necessity existed for calling the military forces into service, but that the expenditures have been reasonable in amount, and have not been improvidently incurred.

By the "Act making appropriations for the sundry civil expenses of the Government for the year ending June, 1864, and for other purposes," an appropriation was made "to pay the Governor of the State of Minnesota, or his duly authorized agent, the costs, charges, and expenses properly incurred by said States in suppressing Indian hostilities within said State and upon its borders in the year 1862, not exceeding \$250,000, to be settled upon proper vouchers to be filed and passed upon by the proper accounting officers of the Treasury." (See 12 U. S. Stats., p. 754.)

In the sundry civil bill of the following year an appropriation of the sum of \$117,000 was made to the same State "to supply a deficiency in the appropriation for the costs, charges, and expenses properly incurred by the State of Minnesota in suppressing Indian hostilities in the year 1862." (See 13 U. S. Stats., pp. 350, 351.)

By Act approved May 28, 1864, the sum of \$928,411 was appropriated for the payment of damages sustained by citizens of Minnesota "by reason of the depredations and injuries by certain bands of Sioux Indians." (See 13 U. S. Stats., p. 92.)

By Act of January 6, 1883, "to reimburse the States of Oregon and California, and citizens thereof, for moneys paid by said States in the suppression of Indian hostilities during the Modoc war in 1872-73." (U. S. Stats., vol. 22, p. 399.)

And finally, by the Act of June 27, 1882, "to authorize the Secretary of

the Treasury to examine and report to Congress the amount of all claims of the States of Texas, Colorado, Oregon, Nebraska, California, Kansas, Nevada, and Territories of Washington and Idaho for money expended and indebtedness assumed by said States and Territories in repelling invasions and suppressing Indian hostilities, and for other purposes." (U. S. Stats., vol. 22, page 111.)

The legislative precedents clearly establish the fact that the United States have uniformly assumed the payment of expenditures made by the States in repelling Indian invasions and suppressing Indian hostilities.

The United States should therefore refund to the States of California, Oregon, and Nevada, *nunc pro tunc*, the amounts that said States, respectively, may have actually expended as interest; an obligation made the more imperative in their cases, due to the fact that their frontiers were exposed to Indian invasion and Indian hostilities, which the United States could not then promptly suppress, owing to the long distances of the seat of war from the seat of the War Department, and the inadequate military force of the United States in those States at the date when such expenses were paid by said States necessarily incurred.

And this obligation will not be in the least diminished by the further fact that those States had to borrow money at short notice, in order to liquidate pressing demands and meet their obligations to their own citizens, who had to abandon their lucrative civil employment in order to perform a military duty, which, under the Constitution of the United States and of said States, the United States had obligated itself to perform, but which the United States failed to perform, due to the causes hereinbefore stated. The principles hereinbefore discussed have also been fully set before you by Hon. John T. Heard, State agent for Missouri, and Hon. W. W. Wilshire, State agent for Arkansas, in support of H. R. 2463, which bill, however, is limited to cases arising during the late war of the rebellion.

Wherefore, in conclusion, I now respectfully request that either of said bills (Senate No. 320 or H. R. No. 109) may be enacted into a law for the benefit of the States therein named.

Respectfully submitted.

JOHN MULLAN,

Agent and Attorney for the States of California, Oregon, and Nevada.

Appended hereto are some of the more important Acts of Congress relating to this subject, and hereinbefore several times referred to, and given at length in order that your honorable committees may have before them for easy reference this class of legislation, and also full copies of the opinion of the United States Attorney-General, Secretary of the Treasury, and other officials referred to in the foregoing argument, and as follows, to wit:

[Copy.]

DEPARTMENT OF JUSTICE, WASHINGTON, D. C., July 23, 1883.

Hon. CHARLES J. FOLGER, *Secretary of the Treasury*:

SIR: Your letter of the seventh of June, 1882, and the papers which accompanied it, present for my consideration the following question, whether the claim of the State of New York for interest paid by that State on money borrowed and expended in enrolling, subsisting, clothing, etc., its troops employed to aid in the suppression of the rebellion, is within the provisions of the Act of July 27, 1861, entitled "An Act to indemnify the States for expenses incurred by them in defense of the United States." Delay in answering this question has been occasioned mainly by the demands from time to time of other business that seemed to require immediate attention. I have now the honor to submit my views thereon.

The Act of July 27, 1861, provides: "That the Secretary of the Treasury be, and is hereby directed, out of any money in the Treasury not otherwise appropriated, to pay to the Gov-

error of any State, or to his duly authorized agents, the costs, charges, and expenses, properly incurred by such State for enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting its troops, employed in aiding to suppress the present insurrection against the United States, to be settled upon proper vouchers to be filed and passed upon by the proper accounting officers of the Treasury."

By a resolution passed March 8, 1862, the above provision is to be construed to apply to expenses incurred as well after as before the date of the approval thereof.

Under this legislation the State of New York has already been reimbursed the amount of money which was expended by it for the objects specified in the Act of 1861, exclusive of interest paid on money so expended, all of which the State was compelled to borrow. Such interest formed an item in the account rendered by the State, but was not allowed in the adjustment thereof made at the Treasury, the accounting officers not regarding it as admissible under the statute. On the part of the State, however, it is urged that the interest mentioned properly constitutes a part of the costs, charges, and expenses, incurred for the objects above referred to within the meaning of said Act.

According to the construction originally adopted, and thus far uniformly acted upon in settling the claims of States under the Act of July 27, 1861, the provisions thereof extend only to such outlay by the State as were made *directly and specifically* on account of "enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting its troops." And as payments made by the State on account of interest upon a loan to it of the money thus expended, though the expenses incurred for those objects were indirectly and in a general way augmented thereby, are not strictly outlays of the above character. Such payments do not come within the scope of the Act. This interpretation accords with that which prevailed in the execution of similar provisions, under which States were reimbursed for advances made by them during the war of 1812 and other subsequent wars.

By the Act of April 29, 1816 (chapter 160), an appropriation was made "for defraying the expenses incurred by calling out the militia during the late war," in addition to the sums theretofore appropriated to that object, which was applied to the reimbursement of States for advances to meet such expenses. By the Act of March 3, 1817 (chapter 86), an appropriation was made "for the payment of balances due to certain States on account of disbursements for militia employed in the service of the United States during the late war." And by the Act of April 20, 1818 (chapter 109), an appropriation was made "for the payment of balances due several States, on an adjustment of their accounts, for expenses incurred by calling out the militia during the war." Although in each of these provisions very general and comprehensive terms were employed, yet they were not construed to authorize the reimbursements of expenditures made by the States on account of interest, and no claims for such expenditures were allowed thereunder. Congress subsequently provided for these claims by special legislation (thus impliedly recognizing the construction given the general provisions as above), and presented certain rules for their adjustment (see Act of March 3, 1825, chapter 106; May 13, 1826, chapter 39; May 20, 1826, chapter 77; May 22, 1826, chapter 151; March 3, 1827, chapter 79; March 22, 1832, chapter 57). So by the Act of August 11, 1842 (chapter 127), an amount was appropriated "to the payment and indemnity of the State of Georgia for any money actually paid by said State on account of necessary and proper expenses incurred by said State in calling out her militia during the Seminole, Cherokee, and Creek campaigns, in the years 1835 to 1838." And by the Act of August 16, 1842 (chapter 178), the Secretary was directed to audit and adjust the claims of the State of Alabama "for moneys advanced and paid by said State for subsistence, supplies, and services of local troops called into service by and under the authorities of said States, etc.," during Creek and Seminole hostilities. Under neither of these Acts were allowances made for advances on account of interest. But by Act of January 26, 1849 (chapter 25), in the case of Alabama, and by Act of March 3, 1851 (chapter 35), in the case of Georgia, Congress made special provision for such allowances, under rules and according to rates there prescribed.

By a resolution of Congress, passed March 3, 1847, provision was made for refunding to the several States, etc., "the amount of expenses incurred by them in organizing, subsisting, and transporting volunteers previous to their being mustered and received into the service of the United States" for the Mexican war. This provision, it would seem, was not regarded as authorizing reimbursement for interest paid on moneys expended for those purposes, since it was apparently deemed necessary, in order to authorize such reimbursements, to provide therefor by further legislation, which is found in the amendatory Act of June 2, 1848, chap. 60. Undoubtedly the interest paid by the State of New York on money borrowed and applied to the objects specified in the Act of July 27, 1861, forms a part of the burden borne by that State for the general public defense, and constitutes a just charge against the United States; and the obligations to reimburse for payments of that kind, made under similar circumstances, has frequently been recognized by Congress, as appears by statutes above cited. But to construe the provision of that Act so as to include such expenditures, would be giving them a meaning much broader than that which has in practice been given other legislation of like character and purpose, or that seems to be warranted by any sound rule of interpretation. When a payment from the Treasury is claimed under a statute, the payment, in order to be allowed, should appear to be authorized, either expressly or by very clear implication, (9 Opin., 59). The language of the Act under consideration, viewed with reference to claims based upon expenditures for interest, does not satisfy that requirement; for while no authority to reimburse the States for interest paid by them is expressly conferred thereby, such authority is not clearly to be implied therefrom.

Indeed, the absence of any provision in the Act expressly authorizing reimbursement for interest rather gives rise to the implication that such reimbursement was not meant to be allowed thereunder; as in other similar cases reimbursement for interest has generally been made the subject of express authorization where Congress intended its allowance. I am accordingly of the opinion that the claim of the State of New York, referred to in the question submitted, does not come within the provisions of the Act of July 27, 1861.

Very respectfully, your obedient servant,

BENJAMIN HARRIS BREWSTER,  
Attorney-General.

OFFICE OF THE AUDITOR OF STATE, COLUMBUS, OHIO, July 25, 1861.

Hon. S. P. CHASE, Secretary, Washington:

SIR: Yesterday I sent you a dispatch inquiring whether Government would refund to the State a portion of the expenditures for organizing, clothing, subsisting, and equipping troops for Government services without requiring accounts to be audited and allowed, the payment to be subject to future adjustment.

The Commissioners of the Sinking Fund have advertised a loan, which, or the greater part of which, may be withdrawn from market if the Government can pay the State money on account, and hereinafter pass upon items. If the accounts must first be audited and allowed, the time necessary for that purpose will delay the receipt of money and make it necessary for the State to obtain it by loan. If possible this should be avoided, and the double discount which will be inevitable if the State borrows and then the Government to repay the State. Our loan is advertised for August seventh, in New York, at which time it will be necessary that some arrangement for money for immediate use shall have been made. If the Government can, in the way suggested, pay \$150,000 to \$200,000 per week, the State can satisfy the demands upon her without being compelled to borrow, unless temporarily. In case you should be able to refund in advance of audited accounts, such vouchers or acknowledgment as you may desire will be given. I wish, however, that it be distinctly understood that Ohio will not so press for money as in any sense to embarrass you.

I know nothing about the condition of the Treasury, and must not be regarded as importuning you to do what may be inconsistent with a due regard for more pressing liabilities.

I am, very respectfully,

R. W. TAYLER, Auditor.

TREASURY DEPARTMENT, July 29, 1861.

MY DEAR SIR: Yours of the twenty-fifth, making inquiry in regard to the refunding of State expenditures for organizing, clothing, subsisting, and equipping of troops, is received. If you will accept Treasury notes in payment, the expenditures of Ohio will be repaid *pro rata*, as those of Indiana have been, upon the statements of the Governor and State officers, leaving the accounts to be audited hereafter. It will be impossible to advance the coin at present. As to the "double discount" of which you speak, if Ohio raises money by loan, at a discount, the United States cannot refund such discount to the State, but only the amount of the debt, with interest, unless Congress specially provide otherwise.

Yours, very truly,

S. P. CHASE.

Hon. R. W. Tayler, Auditor of the State of Ohio.

#### AN ACT

*Authorizing the payment of interest due to the State of Virginia.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the proper accounting officers of the Treasury Department be and they are hereby authorized and directed to liquidate and settle the claim of the State of Virginia against the United States for interest upon loans or moneys borrowed and actually expended by her for the use and benefit of the United States during the late war with Great Britain.*

*Sec. 2. And be it further enacted, That in ascertaining the amount of interest as aforesaid due to the State of Virginia, the following rules shall be understood as applicable to and governing the case, to wit: First—That interest shall not be computed on any sum which Virginia has not expended for the use and benefit of the United States, as evidenced by the amount refunded or repaid to Virginia by the United States; Second—That no interest shall be paid on any sum on which she has not paid interest; Third—That when the principal, or any part of it, has been paid or refunded by the United States, or money placed in the hands of Virginia for that purpose, the interest on the sum or sums so paid or refunded shall cease and not be considered as chargeable to the United States any longer than up to the time of the repayment as aforesaid.*

*Sec. 3. And be it further enacted, That the amount of the interest, when ascertained as aforesaid, shall be paid out of any money in the Treasury not otherwise appropriated.*

Approved March 3, 1825 (U. S. Stat., vol. 4, p. 132).

## AN ACT

*For the adjustment and settlement of the claims of the State of South Carolina against the United States.*

Be it enacted by the Senate and House of Representatives of the United States, in Congress assembled, That the proper accounting officers of the Treasury be and they are hereby authorized and directed to liquidate and settle the claim of the State of South Carolina against the United States for interest upon money actually expended by her for military stores for the use and benefit of the United States and on account of her militia whilst in the service of the United States during the late war with Great Britain; the money so expended having been drawn by the State from a fund upon which she was then receiving interest.

Sec. 2. And be it further enacted, That in ascertaining the amount of interest to be paid as aforesaid to the State of South Carolina, interest shall be computed upon sums expended by the State for the use and benefit of the United States as aforesaid, and which have been or shall be repaid to South Carolina by the United States.

Approved March 22, 1832 (U. S. Stat., vol. 4, p. 499).

## AN ACT

*To refund money for expenses incurred, subsistence and transportation furnished, for the use of volunteers during the present war before being mustered into the service of the United States.*

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the provisions of the joint resolution approved March 3, 1847, entitled "A resolution to refund money to the States which have supplied volunteers and furnished them transportation during the present war before being mustered and received into the service of the United States," be and the same are hereby extended so as to embrace all cases of expenses heretofore incurred in organizing, subsisting, and transporting volunteers previous to their being mustered and received into the service of the United States, for the present war, whether by States, counties, corporations, or individuals, either acting with or without the authority of the State; provided, however, that proof shall be made to the satisfaction of the Secretary of War of the amount thus expended and that the same was necessary and proper for the troops aforesaid.

Sec. 2. And be it further enacted, That an amount sufficient to refund said expenses so incurred be and the same is hereby appropriated out of any money in the Treasury not otherwise appropriated.

Sec. 3. And be it further enacted, That in refunding moneys under this Act and the resolution which it amends, it shall be lawful to pay interest at the rate of six per centum per annum on all sums advance [advanced] by States, corporations, or individuals, in all cases where the State, corporation, or individual paid or lost the interest, or is liable to pay it.

Approved June 2, 1848 (U. S. Stat., vol. 9, p. 236).

## AN ACT

*Authorizing the payment of interest upon the advances made by the State of Alabama for the use of the United States Government in the suppression of the Creek Indian hostilities of eighteen hundred and thirty-six and eighteen hundred and thirty-seven.*

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of War be and he is hereby directed to pay interest upon the advances made by the State of Alabama for the use of the United States Government for the suppression of hostilities by the Creek Indians in 1836 and 1837 at the rate of six per centum per annum from the time of the advances until the principal sum was paid by the United States to the State of Alabama; and the sum so found to be due to said State to be paid out of any money in the Treasury not otherwise appropriated.

Sec. 2. Be it further enacted, That in ascertaining the amount of interest as aforesaid due to the State of Alabama, the following rules shall govern: That interest shall not be computed on any sum which Alabama has not expended for the use and benefit of the United States, as evidenced by the amount refunded or repaid to the State of Alabama by the United States; second, that no interest shall be paid on any sum which the said State of Alabama did not either pay or lose interest as aforesaid.

Approved January 26, 1849 (U. S. Stat., vol. 9, p. 344).

## AN ACT

*To authorize the Secretary of War to allow the payment of interest to the State of Georgia for advances made for the use of the United States in the suppression of the hostilities of the Creek, Seminole, and Cherokee Indians, in the years of 1836, and 1837, and 1838.*

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of War be and he is hereby authorized to allow to the State of Georgia, for advances made to the United States for the suppression of the hostilities of the Creek, Seminole, and Cherokee Indians, in the years 1836, 1837, and 1838, interest at the rate of six per cent per annum upon all sums allowed and paid to the State of Georgia, or that may hereafter be allowed and paid for any moneys advanced by the State for the purpose aforesaid from the date of such advances until the principal sum or

sums were or may be paid by the United States; provided, that no interest shall be paid on any sum on which the said State of Georgia did not either pay or lose interest.

Approved March 3, 1851 (U. S. Stat., vol. 9, p. 626).

## AN ACT

*Authorizing the payment of interest upon the advances made by the State of Maine for the use of the United States Government in the protection of the northeastern frontier.*

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the proper accounting officers of the Treasury be and they are hereby authorized and directed to liquidate and settle the claim of the State of Maine against the agent of the United States for interest upon money borrowed and actually expended by her for the protection of the northeastern frontier of said State during the years 1839, 1840, and 1841, and the sum so found to be due said State shall be paid out of any money in the Treasury not otherwise appropriated.

Sec. 2. And be it further enacted, That in ascertaining the amount of interest as aforesaid due to the State of Maine, the following rules shall govern: First, that interest shall not be computed on any sum which Maine has not expended for the use and benefit of the United States, as evidenced by the amount refunded or repaid to the State of Maine by the United States; second, that no interest shall be paid on any sum on which the said State of Maine did not either pay or lose interest as aforesaid.

Approved March 3, 1851 (U. S. Stat., vol. 9, p. 626).

## AN ACT

*Providing for refunding the interest paid by the State of Massachusetts on money expended by her on account of the war of 1812 to 1815.*

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That there be allowed on the claim of the State of Massachusetts, for interest paid by her on money expended by said State on account of the war with Great Britain in 1812 to 1815, the sum of \$678,362 41, in full of said claim; and whereas, by an arrangement made by the said State of Massachusetts and the State of Maine, at the time of their separation in 1820, the said State of Maine becomes the owner of one third of this claim; and whereas, both of said States have assigned their respective interests in said claim to the European and North American Railway Company of Maine, to aid said company in constructing its line of railway, the Secretary of the Treasury is hereby authorized and directed to pay one third part of the said claim of \$678,362 41 to the State of Maine, and the other two thirds part thereof to the State of Massachusetts, by an issue to each of said States, for the use and benefit of said European and North American Railway Company, of an amount of United States certificates of indebtedness equal to its share in the whole sum allowed and to be paid; said certificates to be of the denomination of \$1,000 each, to be made and issued by the Secretary of the Treasury in such form, and signed, attested, and registered as he shall direct, and with or without interest warrants, as he may prefer. Each certificate to run five years from its date, to draw interest payable semi-annually, at the rate of four per centum per annum, and to be payable, both principal and interest, in lawful money of the United States, to be hereafter appropriated and provided for by Congress.

Sec. 2. And be it further enacted, That the acceptance by the said States of Massachusetts and Maine, and the said European and North American Railway Company of the amount hereby authorized to be paid to each of said States for the use and benefit of said railway company, shall be held and regarded as a full adjustment and payment of any and all claims for interest as aforesaid, and also a complete adjustment, liquidation, and payment of any and all other claims of the said States of Massachusetts and Maine, and of said railway company, or either of them, against the United States for and on account of any matters arising from any money expended by said State of Massachusetts on account of the war with Great Britain in 1812 to 1815, or any interest thereon, or on account of any matters arising out of or accruing from the treaty with Great Britain, known as the Treaty of Washington, or for or on account of any other matters which have been assigned by said States of Massachusetts and Maine to said railway company.

Approved July 8, 1870 (U. S. Stat., vol. 16, p. 197).

## EXHIBIT No. 6.

Hon. ———:

MY DEAR SIR: Permit me to ask your attention to the provisions of H. B. 2463, the object of which is to authorize the reimbursement of the different States, for the amounts they respectively paid out, as interest, on the moneys they expended for the use of the Government, during the late war. The State of ——— having advanced to the Government for the purposes



above mentioned, the sum of \$ —, almost every dollar of which she borrowed and paid interest on, is, therefore, materially interested in the passage of said bill.

The character of the proposed legislation is, in no sense, new or unusual; but, on the contrary, it is in perfect accord with the practice of the Government for more than sixty years, beginning with the Act of March 3, 1825, for the benefit of Virginia, and continuing through numerous Acts, to that of March 3, 1881, for the benefit of California.

Until recently, the States interested relied on getting their money under the Reimbursement Act of July 27, 1861.

Said Act provides for reimbursing the States for all "*costs, charges, and expenses incurred*," etc., for the purposes therein mentioned; and two days after its passage (July 29, 1861), Mr. Chase, then Secretary of the Treasury, in an official communication addressed to the State Auditor of Ohio, on the subject of the liability of the Government to the States, under said Act, thus interpreted the same:

If Ohio raises money by loan at a discount, the United States cannot refund such discount to the State, but only the amount of the debt with interest, unless Congress specially provide otherwise. (See report of Auditor of Ohio, 1861, p. —.)

Relying on this construction of the law, the States did, since the adjournment of the last Congress, make demand for the payment of such interest, selecting the claim of the State of New York, on which to test the question.

The matter being submitted to the Attorney-General for his opinion, such opinion was announced on July 23, 1883; and while it advised in favor of requiring more specific authority for the payment demanded, it contained the following language:

Undoubtedly, the interest paid by the State of New York on money borrowed and applied to the objects specified in the Act of July 27, 1861, forms a part of the burden borne by that State for the general public defense, and constitutes a just charge against the United States.

In thus stating the liability of the Government, he adopts the views of two of his most distinguished predecessors—Attorneys-General Wm. Wirt, and John J. Crittenden.

Discussing the Act of March 3, 1825, to pay interest to Virginia, Mr. Wirt says:

The expenditure thus incurred forms a debt against the United States which they are bound to reimburse. If the expenditures made for such purpose are supplied from the Treasury of the State, the United States reimburse the principal without interest; but if being unable itself, from the condition of its own finances, to meet the emergency, such State has been obliged to borrow money for the purpose, and thus to incur a debt on which she herself has had to pay interest, such debt is essentially a debt due by the United States, and both the principal and interest are to be paid by the United States. (See Opinions of Attorneys-General, vol. 1, page 174.)

Attorney-General Crittenden, in construing the Act of twenty-seventh February, 1851, "for reimbursing Florida," uses the following language:

The Act of twenty-seventh of February, 1851, is intended to indemnify the State against loss or damage. Reimbursing means repairing the loss or expenses by an equivalent. If the State of Florida has contracted obligations bearing interest, or has paid money, with interest, for the use and benefit, in necessary and proper supplies for the troops called into service in 1849, to refund to the State of Florida the principal sum only, without the interest would not reimburse the State, would not save the State from loss and damage, would not be an equivalent for the expense the State has incurred for the United States. There is no public policy, no saving to the public Treasury, no virtue, no laudable end consulted in order to cut down the claims of the several States, in opposition to the intention of Congress and the good faith of the Government.

Among the Acts passed to provide for paying interest on such advances made by the States and Territories in the past, the following may be cited. First, on account of the war of 1812 and 1814, as follows:

Virginia, Act March 3, 1825, 4 Stat. at Large, p. 132.  
Maryland, Act of May 13, 1826, 4 Stat. at Large, p. 151.  
Delaware, Act of May 20, 1826, 4 Stat. at Large, p. 175.  
New York, Act of May 22, 1826, 4 Stat. at Large, p. 192.  
Pennsylvania, Act of March 3, 1827, 4 Stat. at Large, p. 241.  
South Carolina, Act of March 22, 1832, 4 Stat. at Large, p. 499.  
Maine, Act of March 31, 1851, 9 Stat. at Large, p. 626.  
Massachusetts and Maine, Act July 8, 1870, 16 Stat. at Large, p. 198.

That the same rule has been observed in settling with States for advances made in Indian wars, will be shown by reference to the following cases:

Alabama, Act January 26, 1849, 9 Stat. at Large, p. 344.  
Georgia, Act March 31, 1851, 9 Stat. at Large, p. 626.  
Washington Territory, Act March 3, 1859, 11 Stat. at Large, p. 429.  
New Hampshire, Act January 27, 1852, 10 Stat. at Large, p. 1.  
California, Act August 5, 1854, 10 Stat. at Large, p. 582.  
California, Act August 18, 1856, 11 Stat. at Large, p. 91.  
California, Act June 23, 1860, 12 Stat. at Large, p. 104.  
California, Act July 25, 1868, 15 Stat. at Large, p. 175.  
California, Act March 3, 1881, 21 Stat. at Large, p. 510.

The payment of advances made for the use of the Government in the Mexican war, was provided for by a *general Act*, passed June 2, 1848, which contains the following provision with reference to interest:

That in refunding money under this Act, it shall be lawful to pay interest, at six per centum per annum, on all sums advanced by States, corporations, or individuals, in all cases where the State, corporation, or individual has paid or lost interest, or is liable to pay it. (9 Stat. at Large, p. 236.)

Considering the obvious justice of the object proposed by said bill, and the numerous precedents for its enactment, and in view of the large interest which your State has at stake in the matter, it is hoped that you will give to said measure your early and careful attention; and, if consistent with your views of your duty in the premises, your active support.

Yours, etc.,

JOHN MULLAN,  
State Agent and Counsel for the States of California, Oregon, and Nevada.

## EXHIBIT No. 7.

Forty-eighth Congress, first session. House of Representatives. Report No. 1102.

### INTEREST PAID ON WAR CLAIMS.

April 1, 1884—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Rowell, from the Committee on War Claims, submitted the following

#### REPORT.

[To accompany Bill H. R. 2463.]

The Committee on War Claims, to whom was referred the bill (H. R.



2463) to reimburse the several States for interest paid on war loans, and for other purposes, submit the following report:

By the Act of July 27, 1861, and the joint resolution of March 8, 1862, the Secretary of the Treasury was directed to pay the Governor of any State, or his duly authorized agents, "the cost, charges, and expenses properly incurred by such States for enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting its troops employed in aiding to suppress the present insurrection against the United States, to be settled upon proper vouchers to be filed and passed upon by the proper accounting officers of the Treasury."

By the joint resolution of March 8, 1862, payments were directed to be made for expenditures made subsequent to as well as before the passage of the Act. Under this Act disbursements have been made to the States amounting to the sum of \$43,296,938 22; and there yet remains unsettled or disallowed claims amounting to several millions of dollars.

Many, if not all, of the States were obliged to borrow money to pay the expenses incurred, but in adjusting and allowing their claims the accounting officers of the Treasury have rejected all claims for interest paid out by the States, holding that the law did not authorize such payment.

The bill under consideration provides for reimbursing the States for interest paid or lost on account of expenses incurred and repaid under the Act of July 27, 1861. By its provisions, interest is only to be paid on such sums as have been refunded, or may hereafter be refunded, under the authority of the Act of Congress and explanatory resolution; no interest is to be paid, unless it was actually paid out or lost by the States, and then only up to the time of repayment by the Government; and limited to six per cent.

Claims for interest have been filed amounting to \$3,188,887 25, but these claims are based upon a higher rate of interest than that provided in the bill. Other States have not filed interest claims, owing to the ruling of the Department, but if the bill becomes law they will have proper claims.

Your committee are of opinion that these interest claims, at a rate such as the General Government was obliged to pay, are a just and proper charge against the Government. Immediately after the passage of the Acts, Mr. Chase, then Secretary of the Treasury, in a communication to the Auditor of the State of Ohio, gave assurances that interest would be paid. Laws were passed after the war of 1812, to reimburse the several States for moneys expended in that war, with similar provisos to the law under which the payments herein considered have been made.

Subsequently Congress passed laws to pay interest as is provided in this bill. A similar bill was passed by Congress to reimburse States for expenses incurred on account of the Indian war, with like necessity of subsequent legislation to authorize the payment of interest.

It seems to be the history of all the legislation of Congress for the reimbursement of States for war expenditures, that the initial statutes have always failed to provide for the payment of interest, but in every instance, previous to 1861, subsequent Acts provided for the payment of interest.

It may therefore be regarded as the settled policy of Congress to repay to the several States, not only the principal sums expended by them in aid of the General Government in times of war, but also to repay interest actually paid out, not exceeding the rate paid by the General Government during the same period.

Your committee therefore recommend that the bill do pass.

## EXHIBIT No. 8.

Forty-eighth Congress, first session. S. 2009. Calendar No., 649. [Report No. 590.]

In the Senate of the United States. April 5, 1884.

Mr. Cullom introduced the following bill, which was read twice, and referred to the Committee on Claims.

May 28, 1884—Reported by Mr. Hoar without amendment.

### A BILL

*To reimburse the several States for interest paid on war loans, and for other purposes.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the proper accounting officers of the Treasury Department be and they are hereby authorized and directed to examine, adjust, and settle the claims of the several States of the Union against the United States for interest upon loans or moneys borrowed and actually expended by said States respectively for the use and benefit of the United States under authority of the Act of Congress entitled "An Act to indemnify the States for expenses incurred by them in defense of the United States," approved July twenty-seventh, eighteen hundred and sixty-one, and under the explanatory joint resolution entitled "joint resolution declaratory of the intent and meaning of a certain Act therein named," approved March eighth, eighteen hundred and sixty-two, and kindred Acts providing for the reimbursement of moneys advanced by States to aid in suppressing the rebellion; provided, that the benefits of this Act shall not extend to any State which shall not have presented a claim for such interest at the expiration of one year from the date of the passage of this Act.*

SEC. 2. That in ascertaining the amount of interest due to any State as aforesaid the following rules shall be applicable and shall govern the case, to wit:

*First*—That interest shall not be computed on any sum which such State has not expended for the use and benefit of the United States, as evidenced by the amount refunded or repaid, or which may hereafter be refunded or repaid, to such State under and by authority of the said Act of Congress and the explanatory resolution hereinabove referred to.

*Second*—That interest shall not be paid to any State on any sum on which such State shall not have paid or lost interest.

*Third*—That when the principal, or any part of it, has been paid or refunded by the United States to any State, or placed in the hands of such State for that purpose, interest on the amount of such sum or sums so paid or refunded shall cease, and not be considered as chargeable to the United States any longer than up to the time of the repayment aforesaid.

*Fourth*—That interest shall in all cases contemplated by this Act be computed at the rate of six per centum per annum.

SEC. 3. That the amount of interest due to any State, when ascertained as aforesaid, shall be paid out of any money in the Treasury not otherwise appropriated.

In the Senate of the United States. May 28, 1884—Ordered to be printed.  
Mr. Hoar, from the Committee on Claims, submitted the following

### REPORT.

[To accompany bill S. 2000.]

The Committee on Claims, to whom was referred the bill (S. 2000) to reimburse the several States for interest paid on war loans, and for other purposes, have considered the same, and respectfully report:

The policy of the United States to refund to the States interest on money expended by them in aid of the General Government for military purposes in time of war is settled. It has been applied to all such expenditures incurred by the States in aid of the war of 1812 (see Virginia, Act March 3, 1825, 4 Stat. at Large, p. 132; Maryland, Act of May 13, 1826, 4 Stat. at Large, p. 151; Delaware, Act of May 20, 1826, 4 Stat. at Large, p. 175; New York, Act of May 22, 1826, 4 Stat. at Large, p. 192; Pennsylvania, Act of March 3, 1827, 4 Stat. at Large, p. 241; South Carolina, Act of March 22, 1832, 4 Stat. at Large, p. 499; Maine, Act of March 31, 1851, 9 Stat. at Large, p. 626; Massachusetts and Maine, Act July 8, 1870, 16 Stat. at Large, p. 198); in aid of various Indian wars (see Alabama, Act January 26, 1849, 9 Stat. at Large, p. 344; Georgia, Act March 31, 1851, 9 Stat. at Large, p. 626; Washington Territory, Act March 3, 1859, 11 Stat. at Large, p. 429; New Hampshire, Act January 27, 1852, 10 Stat. at Large, p. 1; California, Act August 5, 1854, 10 Stat. at Large, p. 582; California, Act August 18, 1856, 11 Stat. at Large, p. 91; California, Act June 23, 1860, 12 Stat. at Large, p. 104; California, Act July 25, 1868, 15 Stat. at Large, p. 175; California, Act March 3, 1881, 21 Stat. at Large, p. 510); and in aid of the Mexican war. See statute of June 2, 1848, which is as follows:

#### AN ACT

*To refund money for expenses incurred, subsistence and transportation furnished for the use of volunteers during the present war before being mustered into the service of the United States.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the provisions of the joint resolution approved March 3, 1847, entitled "A resolution to refund money to the States which have supplied volunteers and furnished them transportation during the present war, before being mustered and received into the service of the United States," be and the same are hereby extended so as to embrace all cases of expenses heretofore incurred in organizing, subsisting, and transporting volunteers, previous to their being mustered and received into the service of the United States, for the present war, whether by States, counties, corporations, or individuals, either acting with or without the authority of the State; provided, however, that proof shall be made, to the satisfaction of the Secretary of War, of the amount thus expended, and that the same was necessary and proper for the troops aforesaid.*

Sec. 2. And be it further enacted, That an amount sufficient to refund said expenses so incurred, be and the same is hereby appropriated out of any money in the Treasury not otherwise appropriated.

Sec. 3. And be it further enacted, That in refunding moneys under this Act and the resolution which it amends it shall be lawful to pay interest at the rate of six per centum per annum on all sums advance [advanced] by States, corporations, or individuals, in all cases where the State, corporation, or individual paid or lost the interest, or is liable to pay it.

Approved June 2, 1848.

Mr. Chase, Secretary of the Treasury, recognized the obligation imposed by these precedents, in a communication to the State Auditor of Ohio, in the following language:

If Ohio raises money by loan at a discount, the United States cannot refund such discount to the State, but only the amount of the debt with interest, unless Congress specially provide otherwise.

This was two days after the passage of the statute of July 27, 1861, which is as follows:

That the Secretary of the Treasury be and is hereby directed, out of any money in the Treasury not otherwise appropriated, to pay to the Governor of any State, or to his duly authorized agents, the costs, charges, and expenses properly incurred by such State for enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting its troops employed in aiding to suppress the present insurrection against the United States, to be settled upon proper vouchers to be filed and passed upon by the proper accounting officers of the Treasury.

By a resolution passed March 8, 1862, the above provision is to be construed to apply to expenses incurred as well after as before the date of the approval thereof.

It is held by the accounting officers of the Treasury that they are not warranted in the allowance of interest to the States by the existing law. This question was submitted to the present Attorney-General, who says, in his opinion, July 23, 1883:

Undoubtedly the interest paid by the State of New York on money borrowed and applied to the objects specified in the Act of July 27, 1861, forms a part of the burden borne by that State for the general public defense, and constitutes a just charge against the United States; and the obligation to reimburse for payments of that kind, made under similar circumstances, has frequently been recognized by Congress, as appears by statutes above cited.

This opinion is in accord with that of his predecessors, Mr. Wirt and Mr. Crittenden. Mr. Wirt says:

The expenditure thus incurred forms a debt against the United States which they are bound to reimburse. If the expenditures made for such purpose are supplied from the Treasury of the State, the United States reimburse the principal without interest; but if, being unable itself, from the condition of its own finances, to meet the emergency, such State has been obliged to borrow money for the purpose, and thus to incur a debt on which she herself has had to pay interest, such debt is essentially a debt due by the United States, and both the principal and interest are to be paid by the United States. (See Opinions of Attorneys-General, vol. 1, page 174.)

Mr. Crittenden says:

The Act of twenty-seventh of February, 1851, is intended to indemnify the State against loss or damage. Reimbursing means repairing the loss or expenses by an equivalent. If the State of Florida has contracted obligations bearing interest, or has paid money, with interest, for the use and benefit, in necessary and proper supplies for the troops called into service in 1849, to refund to the State of Florida the principal sum only, without the interest, would not reimburse the State, would not save the State from loss and damage, would not be an equivalent for the expense the State has incurred for the United States. There is no public policy, no saving to the public Treasury, no virtue, no laudable end consulted in order to cut down the claims of the several States, in opposition to the intention of Congress and the good faith of the Government.

We append, for the information of the Senate, House Report No. 1102, made at the present session, and recommend the passage of the bill.

Mr. Rowell, from the Committee on War Claims, submitted the following report to accompany bill H. R. 2463:

The Committee on War Claims, to whom was referred the bill (H. R. 2463) to reimburse the several States for interest paid on war loans, and for other purposes, submit the following report:

By the Act of July 27, 1861, and the joint resolution of March 8, 1862, the Secretary of the Treasury was directed to pay to the Governor of any State, or his duly authorized agents, "the costs, charges, and expenses properly incurred by such States for enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting its troops employed in aiding to suppress the present insurrection against the United States, to be settled upon proper vouchers to be filed and passed upon by the proper accounting officers of the Treasury."

By the joint resolution of March 8, 1862, payments were directed to be made for expenditures made subsequent to as well as before the passage of the Act. Under this Act disbursements have been made to the States amounting to the sum of \$43,296,938 22; and there yet remain unsettled or disallowed claims amounting to several millions of dollars.

Many, if not all, of the States were obliged to borrow money to pay the expenses incurred, but in adjusting and allowing their claims the accounting officers of the Treasury have rejected all claims for interest paid out by the States, holding that the law did not authorize such payment.

The bill under consideration provides for reimbursing the States for interest paid or lost on account of expenses incurred and repaid under the Act of July 27, 1861. By its provisions, interest is only to be paid on such sums as have been refunded or may hereafter be refunded under the authority of the Act of Congress and explanatory resolution: no interest is to be paid, unless it was actually paid out or lost by the States, and then only up to the time of repayment by the Government, and limited to six per cent.

Claims for interest have been filed amounting to \$3,188,887 25, but these claims are based upon a higher rate of interest than that provided in the bill; other States have not filed interest claims, owing to the ruling of the department, but if the bill becomes a law they will have proper claims.

Your committee are of opinion that these interest claims, at a rate such as the General Government was obliged to pay, are a just and proper charge against the Government. Immediately after the passage of the Acts, Mr. Chase, then Secretary of the Treasury, in a communication to the Auditor of the State of Ohio, gave assurances that interest would be paid. Laws were passed after the war of 1812 to reimburse the several States for moneys expended in that war, with similar provisos to the law under which the payments herein considered have been made.

Subsequently Congress passed laws to pay interest, as is provided in this bill. A similar bill was passed by Congress to reimburse States for expenses incurred on account of the Indian war, with like necessity of subsequent legislation to authorize the payment of interest.

It seems to be the history of all the legislation of Congress for the reimbursement of States for war expenditures that the initial statutes have always failed to provide for the payment of interest, but in every instance previous to 1861 subsequent Acts provided for the payment of interest.

It may therefore be regarded as the settled policy of Congress to repay to the several States not only the principal sums expended by them in aid of the General Government in times of war, but also to repay interest actually paid out not exceeding the rate paid by the General Government during the same period.

Your committee therefore recommend that the bill do pass.

### EXHIBIT No. 8½.

Senate Concurrent Resolution No. 25 (adopted March 5, 1885).

WHEREAS, The law of July 27, 1861, and the "joint and declaratory resolution" of March 8, 1862, provided for the reimbursement to the States of all sums by them expended in defense of the United States; and whereas, under the interpretation of said original Act of 1861, made two days after its passage by the Secretary of the Treasury, the States were led to believe that if they, respectively, borrowed money on their own account and advanced it to the United States, under the conditions mentioned in said law, that said sums, together with the interest paid thereon, would be refunded to them, that having been the practice of the United States in such cases for more than sixty years; and whereas, acting under this impression and belief, many of the States did borrow moneys and advance them to the United States, and paid interest thereon from their own resources; and whereas, the principal has, in a great measure, been refunded by the United States to the States advancing said moneys, still the interest paid by such States, as aforesaid, has not been refunded; and whereas, it is held by the Treasury Department, through which such reimbursement settlements are made, that specific legislation will be required to justify the payment of such interest; and whereas, Congress has always heretofore provided, specifically, for the payment of interest on such advances made in any war, either foreign or Indian, beginning with the Act of March 3, 1825, to reimburse Virginia for interest on advances made during the

war of 1812, to that of March 3, 1881, to reimburse California on account of similar expenditures made in one of her Indian wars; and whereas, during the late war, and under authority of said "reimbursement" Acts of 1861 and 1862, the State of California advanced to the United States money which she borrowed, and on which she paid interest, and which interest has in no part been refunded by the United States, but is now justly due the State; and whereas, there are now pending, in both branches of the present Congress, measures designed to authorize the settlement of the claims of the several States for such interest (being S. 2000, and H. R. 2463), and which said measures have been reported on by the committees to which they were referred, in both Houses, in unanimously favorable reports; therefore,

*Be it resolved by the Senate, the Assembly concurring,* That our Senators and Representatives in Congress be and they are hereby requested to give their active support to said bills, or to others having the same object in view, and to use their best endeavors, in coöperation with the agent of this State, and in support of his efforts, to thus secure to the State the amounts by her expended, as aforesaid.

*Be it further resolved,* That a copy of the above preamble and resolution be sent by the Governor of this State to our Senators and Representatives in Congress, and to our State agent.

### EXHIBIT No. 9.

Forty-ninth Congress, first session. H. R. 152.

In the House of Representatives. December 21, 1885—Read twice, referred to the Committee on War Claims, and ordered to be printed.

Mr. Henley introduced the following bill:

### A BILL

*To reimburse the several States for interest paid on war loans, and for other purposes.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the proper accounting officers of the Treasury Department be and they are hereby authorized and directed to examine, adjust, and settle the claims of the several States of the Union against the United States for interest upon loans or moneys borrowed and actually expended by said States, respectively; for the use and benefit of the United States, under authority of the Act of Congress entitled "An Act to indemnify the States for expenses incurred by them in defense of the United States," approved July twenty-seventh, eighteen hundred and sixty-one, and under the explanatory joint resolution entitled "Joint resolution declaratory of the intent and meaning of a certain Act therein named," approved March eighth, eighteen hundred and sixty-two, and kindred Acts, providing for the reimbursement of moneys advanced by States to aid in suppressing the rebellion; *provided*, that the benefits of this Act shall not extend to any State which shall not have presented a claim for such interest at the expiration of one year from the date of the passage of this Act.

Sec. 2. That in ascertaining the amount of interest due to any State as

aforesaid, the following rules shall be applicable and shall govern the case, to wit:

*First*—That interest shall not be computed on any sum which such State has not expended for the use and benefit of the United States, as evidenced by the amount refunded or repaid, or which may hereafter be refunded or repaid, to such State, under and by authority of the said Acts of Congress and the explanatory resolution hereinabove referred to.

*Second*—That interest shall not be paid to any State on any sum on which such State shall not have paid interest, or lost the same by the disposition of interest-bearing securities held by the State.

*Third*—That when the principal, or any part of it, has been paid or refunded by the United States to any State, or placed in the hands of such State for that purpose, interest on the amount of such sum or sums so paid or refunded shall cease, and not be considered as chargeable to the United States any longer than up to the time of the repayment aforesaid.

*Fourth*—That interest shall in all cases contemplated by this Act be computed at the rate paid by the State, not exceeding six per centum per annum.

SEC. 3. That the amount of interest due to any State, when ascertained as aforesaid, shall be paid out of any money in the Treasury not otherwise appropriated.

Forty-ninth Congress, first session. H. R. 163.

In the House of Representatives. December 21, 1885—Read twice, referred to the Committee on War Claims, and ordered to be printed.

Mr. Henley introduced the following bill:

#### A BILL

*To reimburse the States and Territories for interest on money heretofore used and expended by them in the suppression of Indian hostilities.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the proper accounting officers of the Treasury Department be and they are hereby authorized and directed to examine, adjust, and settle the claims of the several States and Territories for interest upon loans or moneys borrowed and heretofore actually expended by said States and Territories, respectively, in the suppression of Indian hostilities; *provided*, that the benefits of this Act shall not extend to any State or Territory which shall not have presented a claim for such interest at the expiration of one year from the date of the passage of this Act.

SEC. 2. That in ascertaining the amount of interest due to any State or Territory, as aforesaid, the following rules shall be applicable, and shall govern the case, to wit:

*First*—That interest shall not be computed on any sum which such State or Territory has not heretofore expended in the suppression of Indian hostilities, as evidenced by the amount of money refunded or repaid, or which may hereafter be refunded or repaid to such States or Territories which have heretofore made such expenditures.

*Second*—That no interest shall be paid to any State or Territory on any sum on which said State or Territory shall not have paid or lost interest.

*Third*—That when the principal, or any part of it, has been paid or refunded by the United States to any such State or Territory, or placed in

the hands of such State or Territory for that purpose, interest on the amount of the sum or sums so paid or refunded shall cease, and not be considered as chargeable to the United States any longer than up to the time of the repayment aforesaid.

*Fourth*—That interest in all cases contemplated by this Act shall be computed at the rate of six per centum per annum.

SEC. 3. That the amount of interest due to any State or Territory, when ascertained as aforesaid, shall be paid to the Governor of such State or Territory, or the duly authorized agent thereof, by the Secretary of the Treasury, out of any money in the Treasury not otherwise appropriated.

Forty-ninth Congress, first session. S. 59. Calendar No. 8. Report No. 2.

In the Senate of the United States. December 8, 1885—Mr. Cullom introduced the following bill; which was read twice and referred to the Committee on Claims.

December 16, 1885—Reported by Mr. Hoar, with amendments, viz.: Omit the parts struck through and insert the parts printed in *italics*.

#### A BILL

*To reimburse the several States for interest paid on war loans, and for other purposes.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the proper accounting officers of the Treasury Department be and they are hereby authorized and directed to examine, adjust, and settle the claims of the several States of the Union against the United States for interest upon loans or moneys borrowed and actually expended by said States, respectively, for the use and benefit of the United States, under authority of the Act of Congress entitled "An Act to indemnify the States for expenses incurred by them in defense of the United States," approved July twenty-seventh, eighteen hundred and sixty-one, and under the explanatory joint resolution entitled "Joint Resolution declaratory of the intent and meaning of a certain Act therein named," approved March eighth, eighteen hundred and sixty-two, and kindred Acts providing for the reimbursement of moneys advanced by States to aid in suppressing the rebellion; *provided*, that the benefits of this Act shall not extend to any State which shall not have presented a claim for such interest at the expiration of one year from the date of the passage of this Act.

SEC. 2. That in ascertaining the amount of interest due to any State as aforesaid the following rules shall be applicable, and shall govern the case, to wit:

*First*—That interest shall not be computed on any sum which such State has not expended for the use and benefit of the United States, as evidenced by the amount refunded or repaid, or which may hereafter be refunded or repaid to such State, under and by authority of the said Acts of Congress and the explanatory resolution hereinabove referred to.

*Second*—That interest shall not be paid to any State on any sum on which such State shall not have paid interest, or lost the same by the disposition of interest-bearing securities held by the State.

*Third*—That when the principal, or any part of it, has been paid or refunded by the United States to any State, or placed in the hands of such State for that purpose, interest on the amount of such sum or sums so paid

or refunded shall cease, and not be considered as chargeable to the United States any longer than up to the time of the repayment aforesaid.

*Fourth*—That interest shall in all cases contemplated by this Act be computed at the rate paid by the State, not exceeding six per centum per annum.

SEC. 3. That the amount of interest due to any State, when ascertained as aforesaid, shall be paid out of any money in the Treasury not otherwise appropriated.

### EXHIBIT No. 10.

Forty-ninth Congress, first session. Senate. Report No. 2.

In the Senate of the United States. December 16, 1885—Ordered to be printed.

Mr. Hoar, from the Committee on Claims, submitted the following

### REPORT.

[To accompany bill S. 59.]

The Committee on Claims, to whom was referred the bill (S. 59) to reimburse the several States for interest paid on war loans, and for other purposes, have considered the same, and respectfully report:

The policy of the United States to refund to the States interest on money expended by them in aid of the General Government for military purposes in time of war is settled. It has been applied to all such expenditures incurred by the States in aid of the war of 1812 (see Virginia, Act March 3, 1825, 4 Stat. at Large, p. 132; Maryland, Act of May 13, 1826, 4 Stat. at Large, p. 151; Delaware, Act of May 20, 1826, 4 Stat. at Large, p. 175; New York, Act of May 22, 1826, 4 Stat. at Large, p. 192; Pennsylvania, Act of March 3, 1827, 4 Stat. at Large, p. 241; South Carolina, Act of March 22, 1832, 4 Stat. at Large, p. 499; Maine, Act of March 31, 1851, 9 Stat. at Large, p. 626; Massachusetts and Maine, Act July 8, 1870, 16 Stat. at Large, p. 198); in aid of various Indian wars (see Alabama, Act January 26, 1849, 9 Stat. at Large, p. 344; Georgia, Act March 31, 1851, 9 Stat. at Large, p. 626; Washington Territory, Act March 3, 1859, 11 Stat. at Large, p. 429; New Hampshire, Act January 27, 1852, 10 Stat. at Large, p. 1; California, Act August 5, 1854, 10 Stat. at Large, p. 582; California, Act August 18, 1856, 11 Stat. at Large, p. 91; California, Act June 23, 1860, 12 Stat. at Large, p. 104; California, Act July 25, 1868, 15 Stat. at Large, p. 175; California, Act March 3, 1881, 21 Stat. at Large, p. 510); and in aid of the Mexican war. See statute of June 2, 1848, which is as follows:

#### AN ACT

*To refund money for expenses incurred, subsistence and transportation furnished for the use of volunteers during the present war before being mustered into the service of the United States.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the provisions of the joint resolution approved March 3, 1847, entitled "A resolution to refund money to the States which have supplied volunteers and furnished them transportation during the present war, before being mustered and received into the service of the United States," be and the same are hereby extended so as to embrace all cases of expenses heretofore incurred in organizing, subsisting, and transporting volunteers, previous to their being mustered and received into the service of the United States, for the present war, whether by States, counties, corporations, or individuals, either acting with or without the authority of the State; provided, however, that proof shall be made, to the satisfaction of the Secretary of War, of the amount thus expended, and that the same was necessary and proper for the troops aforesaid.*

SEC. 2. And be it further enacted, That an amount sufficient to refund said expenses so incurred be and the same is hereby appropriated out of any money in the Treasury not otherwise appropriated.

SEC. 3. And be it further enacted, That in refunding moneys under this Act, and the resolution which it amends, it shall be lawful to pay interest at the rate of six per centum per annum on all sums advance [advanced] by States, corporations, or individuals, in all cases where the State, corporation, or individual paid or lost the interest, or is liable to pay it.

Approved June 2, 1848.

Mr. Chase, Secretary of the Treasury, recognized the obligation imposed by these precedents, in a communication to the State Auditor of Ohio, in the following language:

If Ohio raises money by loan at a discount, the United States cannot refund such discount to the State, but only the amount of the debt with interest, unless Congress specially provide otherwise.

This was two days after the passage of the statute of July 27, 1861, which is as follows:

That the Secretary of the Treasury be and is hereby directed, out of any money in the Treasury not otherwise appropriated, to pay to the Governor of any State, or to his duly authorized agents, the costs, charges, and expenses properly incurred by such State for enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting its troops employed in aiding to suppress the present insurrection against the United States, to be settled upon proper vouchers to be filed and passed upon by the proper accounting officers of the Treasury.

By a resolution passed March 8, 1862, the above provision is to be construed to apply to expenses incurred as well after as before the date of the approval thereof.

It is held by the accounting officers of the Treasury that they are not warranted in the allowance of interest to the States by the existing law. This question was submitted to Attorney-General Brewster, who says, in his opinion, July 23, 1883:

Undoubtedly the interest paid by the State of New York on money borrowed and applied to the objects specified in the Act of July 27, 1861, forms a part of the burden borne by that State for the general public defense, and constitutes a just charge against the United States; and the obligation to reimburse for payments of that kind, made under similar circumstances, has frequently been recognized by Congress, as appears by statutes above cited.

This opinion is in accord with that of his predecessors, Mr. Wirt and Mr. Crittenden. Mr. Wirt says:

The expenditure thus incurred forms a debt against the United States which they are bound to reimburse. If the expenditures made for such purpose are supplied from the Treasury of the State, the United States reimburse the principal without interest; but if, being unable itself, from the condition of its own finances, to meet the emergency, such State has been obliged to borrow money for the purpose, and thus to incur a debt on which she herself has had to pay interest, such debt is essentially a debt due by the United States, and both the principal and interest are to be paid by the United States. (See Opinions of Attorneys-General, vol. 1, page 174.)

Mr. Crittenden said:

The Act of twenty-seventh of February, 1851, is intended to indemnify the State against loss or damage. Reimbursing means repairing the loss or expenses by an equivalent. If the State of Florida has contracted obligations bearing interest, or has paid money, with interest, for the use and benefit, in necessary and proper supplies for the troops called into service in 1849, to refund to the State of Florida the principal sum only, without the interest, would not reimburse the State, would not save the State from loss and damage, would not be an equivalent for the expense the State has incurred for the United States. There is no public policy, no saving to the public Treasury, no virtue, no laudable end consulted in order to cut down the claims of the several States, in opposition to the intention of Congress and the good faith of the Government.

We append, for the information of the Senate, House Report No. 1102, made at the last session, and recommend the passage of the bill, with sundry amendments.

Mr. Rowell, from the Committee on War Claims, submitted the following report to accompany bill H. R. 2463:

The Committee on War Claims, to whom was referred the bill (H. R. 2463) to reimburse the several States for interest paid on war loans, and for other purposes, submit the following report:

By the Act of July 27, 1861, and the joint resolution of March 8, 1862, the Secretary of the Treasury was directed to pay to the Governor of any State, or his duly authorized agent, "the costs, charges, and expenses properly incurred by such States for enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting its troops employed in aiding to suppress the present insurrection against the United States, to be settled upon proper vouchers to be filed and passed upon by the proper accounting officers of the Treasury."

By the joint resolution of March 8, 1862, payments were directed to be made for expenditures made subsequent to as well as before the passage of the Act. Under this Act disbursements have been made to the States amounting to the sum of \$43,296,938 22; and there yet remain unsettled or disallowed claims amounting to several millions of dollars.

Many, if not all, of the States were obliged to borrow money to pay the expenses incurred, but in adjusting and allowing their claims the accounting officers of the Treasury have rejected all claims for interest paid out by the States, holding that the law did not authorize such payment.

The bill under consideration provides for reimbursing the States for interest paid or lost on account of expenses incurred and repaid under the Act of July 27, 1861. By its provisions, interest is only to be paid on such sums as have been refunded or may hereafter be refunded under the authority of the Act of Congress and explanatory resolution; no interest is to be paid, unless it was actually paid out or lost by the States, and then only up to the time of repayment by the Government, and limited to six per cent.

Claims for interest have been filed amounting to \$3,188,887 25, but these claims are based upon a higher rate of interest than that provided in the bill; other States have not filed interest claims, owing to the ruling of the department, if the bill becomes a law they will have proper claims.

Your committee are of opinion that these interest claims, at a rate such as the General Government was obliged to pay, are a just and proper charge against the Government. Immediately after the passage of the Acts, Mr. Chase, then Secretary of the Treasury, in a communication to the Auditor of the State of Ohio, gave assurances that interest would be paid. Laws were passed after the war of 1812 to reimburse the several States for moneys expended in that war, with similar provisos to the law under which the payments herein considered have been made.

Subsequently Congress passed laws to pay interest, as is provided in this bill. A similar bill was passed by Congress to reimburse States for expenses incurred on account of the Indian war, with like necessity of subsequent legislation to authorize the payment of interest.

It seems to be the history of all the legislation of Congress for the reimbursement of States for war expenditures that the initial statutes have always failed to provide for the payment of interest, but in every instance previous to 1861 subsequent Acts provided for the payment of interest.

It may therefore be regarded as the settled policy of Congress to repay to the several States not only the principal sums expended by them in aid of the General Government in times of war, but also to repay interest actually paid out not exceeding the rate paid by the General Government during the same period.

Your committee therefore recommend that the bill do pass.

### EXHIBIT No. 11.

Forty-ninth Congress, first session. Senate. Report No. 183.

In the Senate of the United States. March 3, 1886—Ordered to be printed.  
Mr. Hampton, from the Committee on Military Affairs, submitted the following

### REPORT.

[To accompany bill S. 1729.]

The Committee on Military Affairs, to whom was referred bill (S. 1293) "to authorize the Secretary of the Treasury to settle and pay the claim of

the State of Florida on account of expenditures made in suppressing Indian hostilities, and for other purposes," have considered the same, and they beg leave to report:

That in the Forty-eighth Congress they had under consideration the same subject, and they reported by bill to the Senate. A report accompanied the bill, and this report, now annexed, is adopted. They recommend the indefinite postponement of Bill 1293, and the substitution of a bill hereby reported, that being the bill reported favorably by the committee in the Forty-eighth Congress.

[Senate Report No. 109, Forty-eighth Congress, first session.]

The Committee on Military Affairs, to whom was referred the bill (S. 230) "to authorize the Secretary of the Treasury to settle the claim of the State of Florida on account of expenditures made in suppressing Indian hostilities," beg leave to submit the following report:

In accordance with the requirements of the joint resolution of Congress approved March 3, 1881, the Secretary of War has investigated, audited, and made a report to Congress, May 22, 1882, of the amount due the State of Florida for expenditures made in suppressing Indian hostilities in that State between the first day of December, 1855, and the first day of January, 1860. (Ex. Doc. 203, 47th Congress, first session.)

The expenditures grew out of the Seminole war of 1855, 1856, and 1857, the State authorities being compelled, in the presence of an anticipated and subsequently actual outbreak of the Indians, to call forth the militia of the State, the force of United States troops then on duty being inadequate to the protection of the people. The report of the Secretary of War (Ex. Doc. 203) fully sets forth in detail the items of expenditure allowed and disallowed, the total amount found due the State being the sum of \$224,648 09.

It is established that the funds at the command of the Executive of the State of Florida in the years referred to were insufficient to equip, supply, and pay the troops in the field, and, relying upon the approval given by the President of the United States and the Secretary of War, on the twenty-first day of May, 1857, of the services of these volunteers, the State Legislature, in order to provide their equipment and maintenance, authorized the issue of seven per cent bonds.

A portion of the bonds, amounting to \$132,000, was sold by the Governor to the Indian Trust Fund of the United States, and the proceeds of such sale were disbursed by the Treasurer of the State for the "expenses of Indian hostilities," as appears from his report to the Legislature for the year ending October 31, 1857. Another portion was hypothecated to the banks of South Carolina and Georgia as security for a loan of \$222,015, and \$192,331 of this loan was disbursed directly by a disbursing agent of the State in payment of "expenses of Indian hostilities," including pay of volunteers.

The portion of the bonds sold to the United States for the "Indian Trust Fund" is still held by that fund, and accrued interest since 1857.

The State of Florida paid out through a disbursing agent, as shown by War Department report.....	\$193,330 16
And through warrants from State Treasurer .....	78,056 11
Total.....	\$271,386 27
Interest on this sum from January 1, 1857, to April 1, 1883.....	498,672 27
Total cost to the State to date.....	\$770,058 54

We quote from a statement made by the United States Treasurer of the State indebtedness to the "Indian Trust Fund," June 12, 1882, as follows:

Loan on seven per cent bonds of the State of Florida.....	\$132,000
Coupons due and unpaid January 1, 1877.....	138,040
Interest to July 1, 1882, from January 1, 1857.....	50,820
Interest from July 1, 1882, to April 1, 1883.....	6,930
	327,790 00
Due the State .....	\$442,268 54

There appears, therefore, lawfully due the State of Florida, according to the State Treasurer's account, the sum of \$770,058 54, being the principal and interest of the sums which she borrowed and expended on behalf of the United States.

If from this sum be deducted the amount loaned the State by the Indian Trust Fund, principal and interest, \$327,790, there still remains due the State the sum of \$442,268 54.

In auditing the accounts of the State, however, the Secretary of War has disallowed many items under the rules and regulations governing payments to the regular forces,



and yet, with all his disallowances, after an exhaustive examination, he finds due \$324,648 09. Now, if we add the interest on this sum from January 1, 1857, to April 1, 1883, to wit, \$412,790 86, we have \$637,438 95. Now, if we deduct the amount due the Indian Trust Fund, to wit, \$327,790, there is still due the State the sum of \$309,648 95.

This case is one where the Government, through the President of the United States and Secretary of War, promised to pay these troops when mustered into the United States service, and they would have been long since paid by the Government, if so mustered, but the mustering officer arrived in the State after they had been mustered out, and the State was compelled to borrow money with which to pay them.

Congress has universally paid interest to the States where they have paid interest. We cite the cases where interest has been allowed and paid for moneys advanced during the war of 1812-15, as follows: Virginia, Act March 3, 1825 (4 Stat. at L., p. 132); Maryland, Act May 13, 1826 (4 Stat. at L., p. 161); Delaware, Act May 20, 1826 (4 Stat. at L., p. 175); New York, Act May 22, 1826 (4 Stat. at L., p. 192); Pennsylvania, Act March 3, 1827 (4 Stat. at L., p. 241); South Carolina, Act March 22, 1832 (4 Stat. at L., p. 499); Massachusetts, July 8, 1870 (16 Stat. at L., p. 198).

For advances for Indian and other wars the same rule has been observed in the following cases: Alabama, Act January 26, 1849 (4 Stat. at L., p. 344); Georgia, Act March 31, 1851 (9 Stat. at L., p. 626); Georgia, Act March 3, 1879 (20 Stat. at L., p. 385); Washington Territory, Act March 3, 1859 (11 Stat. at L., p. 429); New Hampshire, Act January 27, 1852 (10 Stat. at L., p. 1).

Thus it will be seen that the precedent for the payment of interest under the rule adopted for the settlement of claims of war of 1812-15 is well established.

The committee are of the opinion that the urgent necessity for the services of these troops and the action of the President and the Secretary of War create an equitable obligation on the part of the General Government; and as the State of Florida not only borrowed money from the Indian Trust Fund, but also from the banks of the States of Georgia and South Carolina, for their payment, upon which the State has since paid interest, your committee have concluded to recommend the sum of \$92,648 09 as a full payment to the State of all Indian war claims, this being the difference after deducting the sum borrowed by the State from the Indian Trust Fund (\$132,000) from the amount found due the State by the Secretary of War (\$224,648 09), and to further recommend the delivery to the State of all bonds and coupons held by the trustee of the Indian Trust Fund.

The committee have amended the bill in accordance with the views expressed in this report, and they recommend the passage of the bill as thus amended. Accompanying the report is a communication from the Secretary of War, explaining the origin and the present condition of the claim of the State of Florida against the Government of the United States.

## EXHIBIT No. 12.

Forty-ninth Congress, first session. House of Representatives. Report No. 1560.

### REIMBURSING INTEREST ON WAR LOANS.

April 6, 1886—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Perry, from the Committee on War Claims, submitted the following

#### REPORT.

[To accompany bill H. R. 152.]

The Committee on War Claims, to whom was referred the bill (H. R. 152) to reimburse the several States for interest paid on war loans, and for other purposes, having carefully considered the same and accompanying papers, submit the following report:

By the Act of July 27, 1861, and the joint resolution of March 8, 1862, the Secretary of the Treasury was directed to pay to the Governor of any State or his duly authorized agents "the costs, charges, and expenses properly incurred by such States for enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting its troops employed in aiding to suppress the present insurrection against the United States, to be settled upon proper vouchers to be filed and passed upon by the proper accounting officers of the Treasury."

By the joint resolution of March 8, 1862, payments were directed to be made for expenditures made subsequent to, as well as before, the passage of the Act.

Under this Act disbursements have been made to the States amounting to the sum of \$43,296,938 22, and there yet remain unsettled or disallowed claims amounting to several millions of dollars.

Many, if not all, of the States were obliged to borrow money to pay the expenses incurred, but in adjusting and allowing their claims the accounting officers of the Treasury have rejected all claims for interest paid out by the States, holding that the law did not authorize such payment. An examination of the evidence leads us to the conclusion that the decision of the Department was correct. Your committee therefore recommend that the bill do not pass.

#### VIEWS OF THE MINORITY.

A similar bill was introduced in the Forty-eighth Congress, and referred to the Committee on War Claims, which, through Mr. Rowell, presented the following report, to wit:

By the Act of July 27, 1861, and the joint resolution of March 8, 1862, the Secretary of the Treasury was directed to pay to the Governor of any State, or his duly authorized agents, "the costs, charges, and expenses properly incurred by such States, for enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting its troops employed in aiding to suppress the present insurrection against the United States, to be settled upon proper vouchers to be filed and passed upon by the proper accounting officers of the Treasury."

By the joint resolution of March 8, 1862, payments were directed to be made for expenditures made subsequent to as well as before the passage of the Act. Under this Act disbursements have been made to the States amounting to the sum of \$43,296,938 22; and there yet remain unsettled or disallowed claims amounting to several millions of dollars.

Many, if not all, of the States were obliged to borrow money to pay the expenses incurred, but in adjusting and allowing their claims the accounting officers of the Treasury have rejected all claims for interest paid out by the States, holding that the law did not authorize such payment.

The bill under consideration provides for reimbursing the States for interest paid or lost on account of expenses incurred and repaid under the Act of July 27, 1861. By its provisions, interest is only to be paid on such sums as have been refunded or may hereafter be refunded under the authority of the Act of Congress and explanatory resolution; no interest is to be paid, unless it was actually paid out or lost by the States, and then only up to the time of repayment by the Government, and limited to six per cent.

Claims for interest have been filed amounting to \$3,188,887 25, but these claims are based upon a higher rate of interest than that provided in the bill; other States have not filed interest claims, owing to the ruling of the Department, but if the bill becomes law they will have proper claims.

Your committee are of opinion that these interest claims, at a rate such as the General Government was obliged to pay, are a just and proper charge against the Government. Immediately after the passage of the Acts, Mr. Chase, then Secretary of the Treasury, in a communication to the Auditor of the State of Ohio, gave assurances that interest would be paid. Laws were passed after the war of 1812 to reimburse the several States for moneys expended in that war, with similar provisos to the law under which the payments herein considered have been made.

Subsequently Congress passed laws to pay interest, as is provided in this bill. A similar bill was passed by Congress to reimburse States for expenses incurred on account of the Indian wars, with like necessity of subsequent legislation to authorize the payment of interest.

It seems to be the history of all the legislation of Congress for the reimbursement of States for war expenditures that the initial statutes have always failed to provide for the payment of interest, but in every instance, previous to 1861, subsequent Acts provided for the payment of interest.

It may therefore be regarded as the settled policy of Congress to repay to the several States, not only the principal sums expended by them in aid of the General Government in times of war, but also to repay interest actually paid out, not exceeding the rate paid by the General Government during the same period.

Your committee therefore recommend that the bill do pass.

The minority cannot but think that, in view of the numerous precedents set out in the foregoing report of Mr. Rowell, and in view of the well

established policy of the Government, and in view of the assurances of the governmental authorities when the States assumed these obligations, and in view of what the minority believes to be but equal justice to all the States, the bill should pass.

This was as much a necessary expenditure as though the money had been paid for arms or ammunition. Had the States, generally the new Western States, which had not plethoric Treasuries, refused to borrow the money with which to organize and equip their quotas of troops, the Federal Government must necessarily have done so; and since these new and financially poor States came patriotically to the rescue of the depleted National Treasury in the hour of the Nation's peril, and pledged their own credit for its salvation, no good reason exists why they should not be reimbursed their *whole* expenditure, the same as has been done for the more fortunate and wealthy States. Equal justice to all should be our motto.

But not only has the Government made similar reimbursements after all wars previous to the last civil war, but this Congress has evinced a determination to perpetuate the same policy. The bill H. R. 3877 was on the eighteenth day of January, 1886, introduced in this House, and referred to the Committee on Claims. This is an Act for the relief of the State of Florida, and among other things authorizes the repayment of interest paid by Florida on interest-bearing securities issued by said State for the purpose of raising money with which to equip troops for different Indian wars. On the third of February last said committee reported said bill back with the recommendation that it do pass, and the same is now on the calendar of this House. The report is No. 303, and is as follows:

The Committee on Claims, to whom was referred the bill (H. R. 3877) to authorize the Secretary of the Treasury to settle the claim of the State of Florida on account of expenditures made in suppressing Indian hostilities, beg leave to submit the following report:

In accordance with the requirements of the joint resolution of Congress, approved March 3, 1881, the Secretary of War has investigated, audited, and made a report to Congress, May 22, 1882, of the amount due the State of Florida for expenditures made in suppressing Indian hostilities in that State between the first day of December, 1855, and the first day of January, 1860 (Ex. Doc. 203, Forty-seventh Congress, first session).

The expenditures grew out of the Seminole war of 1855, 1856, and 1857, the State authorities being compelled, in the presence of an anticipated and subsequently actual outbreak of the Indians, to call forth the militia of the State, the force of the United States troops then on duty being inadequate to the protection of the people. The report of the Secretary of War (Ex. Doc. 203) fully sets forth in detail the items of expenditure allowed and disallowed, the total amount found due the State being the sum of \$224,648 09.

It is established that the funds at the command of the Executive of the State of Florida in the years referred to were insufficient to equip, supply, and pay the troops in the field, and relying upon the approval given by the President of the United States, through the Secretary of War, on the twenty-first day of May, 1857, of the services of these volunteers, the State Legislature, in order to provide their equipment and maintenance, authorized the issue of seven per cent bonds.

A portion of the bonds, amounting to \$132,000, was sold by the Governor to the Indian Trust Fund of the United States, and the proceeds of such sale were disbursed by the Treasurer of the State for the "expenses of Indian hostilities," as appears from his report to the Legislature for the year ending October 31, 1857 (Ex. Doc. 203, Forty-seventh Congress, first session). Another portion was hypothecated to the banks of South Carolina and Georgia as security for a loan of \$222,015, and \$192,331 of this loan was disbursed directly by a disbursing agent of the State in payment of "expenses of Indian hostilities," including pay of volunteers (Ex. Doc. 203, Forty-seventh Congress, first session).

This case is one where the Government, through the President of the United States by the Secretary of War, promised to pay these troops when mustered into the United States service, and they would have been long since paid by the Government if so mustered, but the mustering officer arrived in the State after they had been mustered out, and the State was compelled to borrow money with which to pay them (see letter of Secretary of War, hereto appended).

Congress has universally paid interest to the States where they have paid interest. We cite the cases where interest has been allowed and paid for moneys advanced during the war of 1812-15, as follows: Virginia, Act March 3, 1825 (4 Stat. at L., p. 132); Maryland, Act May 13, 1826 (4 Stat. at L., p. 161); Delaware, Act May 20, 1826 (4 Stat. at L., p. 175); New York, Act May 22, 1826 (4 Stat. at L., p. 192); Pennsylvania, Act March 3, 1827 (4 Stat. at

L., p. 241); South Carolina, Act March 22, 1832 (4 Stat. at L., p. 499); Maine, Act of March 31, 1851 (9 Stat. at L., p. 626); Massachusetts and Maine, Act of July 8, 1870 (16 Stat. at L., p. 198).

For advances for Indian and other wars the same rule has been observed in the following cases: Alabama, Act January 26 (4 Stat. at L., p. 344); Georgia, Act March 31, 1851 (9 Stat. at L., p. 626); Georgia, Act March 3, 1879 (20 Stat. at L., p. 385); Washington Territory, Act March 3, 1859 (11 Stat. at L., p. 429); New Hampshire, Act January 27, 1852 (10 Stat. at L., p. 1); California, Act of August 5, 1854 (10 Stat. at L., p. 582); California, Act August 18, 1856 (11 Stat. at L., p. 91); California, Act June 23, 1860 (12 Stat. at L., p. 104); California, Act July 25, 1868 (15 Stat. at L., p. 175); California, Act March 3, 1881 (21 Stat. at L., p. 510); and in aid of the Mexican war (see statute of June 2, 1848).

Attorney-General Wirt, in his opinion on an analogous case, says:

"The expenditure thus incurred forms a debt against the United States which they are bound to reimburse. If the expenditures made for such purpose are supplied from the Treasury of the State, the United States reimburse principal without interest; but if, being unable itself, from the condition of its own finances, to meet the emergency, such State has been obliged to borrow money for the purpose, and thus to incur a debt on which she herself has had to pay interest, such debt is essentially a debt due by the United States, and both the principal and interest are to be paid by the United States (see Opinions of Attorneys-General, vol. 1, p. 174)."

Thus it will be seen that the precedent for the payment of interest, under the rule adopted for the settlement of claims of war of 1812-15, and Indian wars above cited, is well established.

The committee are of the opinion that the urgent necessity for the services of these troops, and the action of the President and the Secretary of War, are well established, and create an equitable obligation on the part of the General Government, and as it is clearly shown by Ex. Doc. 203, Forty-seventh Congress, that the State of Florida not only borrowed money from the Indian Trust Fund, but also from the banks of the States of Georgia and South Carolina, for their payment, upon which the State has since paid interest, your committee have concluded to recommend the passage of the bill with the following amendments:

In line 18 of Section 1, after the word "it," insert the words "upon said claim or claims."

In line 8 of Section 2, strike out the words "and to pay such sum so ascertained due the said State," and insert the words, "and shall adjust and settle the claim of the State therefor, and shall pay such sum as may be ascertained to be due the State thereon."

WAR DEPARTMENT, WASHINGTON, D. C., May 21, 1857.

SIR: I have the honor to acknowledge the receipt of your letter of the eighth instant, asking an approval of the services of certain volunteers called out by you, and in reply to inform you that the explanations as to the necessity of their services is satisfactory, and orders have been issued to the officer commanding in Florida to muster them in and out of the service of the United States.

Very respectfully, your obedient servant,

JOHN B. FLOOD, Secretary of War.

His Excellency James E. Broome, Governor of Georgia.

But again, on March 3, 1886, a bill (S. 1729) of substantially the same import as the last mentioned House bill, was introduced into the Senate and referred to the Committee on Military Affairs, which committee has since made the following report, to wit:

The Committee on Military Affairs, to whom was referred the bill (S. 1293) "to authorize the Secretary of the Treasury to settle and pay the claim of the State of Florida on account of expenditures made in suppressing Indian hostilities, and for other purposes," have considered the same, and they beg leave to report:

That in the Forty-eighth Congress they had under consideration the same subject, and they reported by bill to the Senate. A report accompanied the bill, and this report, now annexed, is adopted. They recommend the indefinite postponement of bill 1293, and the substitution of a bill hereby reported, that being the bill reported favorably by the committee in the Forty-eighth Congress.

[Senate Report, No. 109, Forty-eighth Congress, first session.]

The Committee on Military Affairs, to whom was referred the bill (S. 230) to authorize the Secretary of the Treasury to settle the claim of the State of Florida on account of expenditures made in suppressing Indian hostilities, beg leave to submit the following report:

In accordance with the requirements of the joint resolution of Congress approved March 3, 1881, the Secretary of War has investigated, audited, and made a report to Congress, May 22, 1882, of the amount due the State of Florida for expenditures made in sup-

pressing Indian hostilities in that State between the first day of December, 1855, and the first day of January, 1860. (Ex. Doc. 203, Forty-seventh Congress, first session.)

The expenditures grew out of the Seminole war of 1855, 1856, and 1857, the State authorities being compelled, in the presence of an anticipated and subsequently actual outbreak of the Indians, to call forth the militia of the State, the force of United States troops then on duty being inadequate to the protection of the people. The report of the Secretary of War (Ex. Doc. 203) fully sets forth in detail the items of expenditure allowed and disallowed, the total amount found due the State being the sum of \$224,648 09.

It is established that the funds at the command of the Executive of the State of Florida in the years referred to were insufficient to equip, supply, and pay the troops in the field, and, relying upon the approval given by the President of the United States and the Secretary of War, on the twenty-first day of May, 1857, of the services of these volunteers, the State Legislature, in order to provide their equipment and maintenance, authorized the issue of seven per cent bonds.

A portion of the bonds, amounting to \$132,000, was sold by the Governor to the Indian Trust Fund of the United States, and the proceeds of such sale were disbursed by the Treasurer of the State for the "expenses of Indian hostilities," as appears from his report to the Legislature for the year ending October 31, 1857. Another portion was hypothecated to the banks of South Carolina and Georgia as security for a loan of \$222,015, and \$192,331 of this loan was disbursed directly by a disbursing agent of the State in payment of "expenses of Indian hostilities," including pay of volunteers.

The portion of the bonds sold to the United States for the "Indian Trust Fund" is still held by that fund and accrued interest since 1857.

The State of Florida paid out through a disbursing agent, as shown by War Department report..... \$193,330 16  
And through warrants from State Treasurer..... 78,056 11

Total..... \$271,386 27  
Interest on this sum from January 1, 1857, to April 1, 1883..... 498,672 27

Total cost to the State to date..... \$770,058 54

We quote from a statement made by the United States Treasurer of the State indebtedness to the "Indian Trust Fund," June 12, 1882, as follows:

Loan on seven per cent bonds of the State of Florida..... \$132,000  
Coupons due and unpaid January 1, 1857..... 138,040  
Interest to July 1, 1882, from January 1, 1857..... 50,820  
Interest from July 1, 1882, to April 1, 1883..... 6,930

327,790 00

Due the State..... \$442,268 54

There appears, therefore, lawfully due the State of Florida, according to the State Treasurer's account, the sum of \$770,058 54, being the principal and interest of the sums which she borrowed and expended on behalf of the United States.

If from this sum be deducted the amount loaned the State by the Indian Trust Fund, principal and interest, \$327,790, there still remains due the State the sum of \$442,268 54.

In auditing the accounts of the State, however, the Secretary of War has disallowed many items under the rules and regulations governing payments to the regular forces, and yet, with all his disallowances, after an exhaustive examination, he finds due \$224,648 09. Now, if we add the interest on this sum from January 1, 1857, to April 1, 1883, to wit, \$412,790 86, we have \$637,438 95. Now, if we deduct the amount due the Indian Trust Fund, to wit, \$327,790, there is still due the State the sum of \$309,648 95.

This case is one where the Government, through the President of the United States and the Secretary of War, promised to pay these troops when mustered into the United States service, and they would have been long since paid by the Government, if so mustered, but the mustering officer arrived in the State after they had been mustered out, and the State was compelled to borrow money with which to pay them.

Congress has universally paid interest to the States where they have paid interest. We cite the cases where interest has been allowed and paid for moneys advanced during the war of 1812-15, as follows: Virginia, Act March 3, 1825 (4 Stat. at L., p. 132); Maryland, Act May 13, 1826 (4 Stat. at L., p. 161); Delaware, Act May 20, 1826 (4 Stat. at L., p. 175); New York, Act May 22, 1826 (4 Stat. at L., p. 192); Pennsylvania, Act March 3, 1827 (4 Stat. at L., p. 241); South Carolina, Act March 22, 1832 (4 Stat. at L., p. 499); Massachusetts, July 8, 1870 (16 Stat. at L., p. 198).

For advances for Indian and other wars the same rule has been observed in the following cases: Alabama, Act January 26, 1849 (4 Stat. at L., p. 344); Georgia, Act March 31, 1851 (9 Stat. at L., p. 626); Georgia, Act March 3, 1879 (20 Stat. at L., p. 385); Washington Territory, Act March 3, 1859 (11 Stat. at L., p. 429); New Hampshire, Act January 27, 1852 (10 Stat. at L., p. 1).

Thus it will be seen that the precedent for the payment of interest under the rule adopted for the settlement of claims of war of 1812-15 is well established.

The committee are of the opinion that the urgent necessity for the services of these troops and the action of the President and the Secretary of War create an equitable obligation on the part of the General Government; and as the State of Florida not only borrowed money from the Indian Trust Fund, but also from the banks of the States of

Georgia and South Carolina, for their payment, upon which the State has since paid interest, your committee have concluded to recommend the sum of \$92,648 09 as a full payment to the State of all Indian war claims, this being the difference after deducting the sum borrowed by the State from the Indian Trust Fund (\$132,000) from the amount found due the State by the Secretary of War (\$224,628 09), and to further recommend the delivery to the State of all bonds and coupons held by the trustees of the Indian Trust Fund.

The committee have amended the bill in accordance with the views expressed in this report and they recommend the passage of the bill as thus amended. Accompanying the report is a communication from the Secretary of War, explaining the origin and the present condition of the claim of the State of Florida against the Government of the United States.

This bill is now on the Senate calendar.

It does not now seem just, or in accordance with the requirements of national honor, that after so treating all the States making expenditures in all our previous wars, such as are hereinbefore set out, that now we should refuse such reimbursement to the loyal States who came to the rescue of the Government at a time when it was more in need of aid and support than at any other period of its history.

J. LYMAN,  
For Minority of Committee on War Claims.

## EXHIBIT No. 13.

Forty-ninth Congress, first session. House of Representatives. Report No. 303.

## CLAIM OF THE STATE OF FLORIDA.

February 3, 1886—Committed to the Committee of the Whole House on the state of Union and ordered to be printed.

Mr. Dougherty, from the Committee on Claims, submitted the following

## REPORT.

[To accompany bill H. R. 3877]

The Committee on Claims, to whom was referred the bill (H. R. 3877) to authorize the Secretary of the Treasury to settle the claim of the State of Florida on account of expenditures made in suppressing Indian hostilities, beg leave to submit the following report:

In accordance with the requirements of the joint resolution of Congress, approved March 3, 1881, the Secretary of War has investigated, audited, and made a report to Congress May 22, 1882, of the amount due the State of Florida for expenditures made in suppressing Indian hostilities in that State between the first day of December, 1855, and the first day of January, 1860 (Ex. Doc. 203, Forty-seventh Congress, first session).

The expenditures grew out of the Seminole war of 1855, 1856, and 1857, the State authorities being compelled, in the presence of an anticipated and subsequently actual outbreak of the Indians, to call forth the militia of the State, the force of United States troops then on duty being inadequate to the protection of the people. The report of the Secretary of War (Ex. Doc. 203) fully set forth in detail the items of expenditure allowed and disallowed, the total amount found due the State being the sum of \$224,648 09.

It is established that the funds at the command of the Executive of the State of Florida, in the years referred to, were insufficient to equip, supply, and pay the troops in the field, and relying upon the approval given by the

President of the United States, through the Secretary of War, on the twenty-first day of May, 1857, of the services of these volunteers, the State Legislature, in order to provide their equipment and maintenance, authorized the issue of seven per cent bonds.

A portion of the bonds, amounting to \$132,000, was sold by the Governor to the Indian Trust Fund of the United States, and the proceeds of such sale were disbursed by the Treasurer of the State for the "expenses of Indian hostilities," as appears from his report to the Legislature for the year ending October 31, 1857 (Ex. Doc. 203, Forty-seventh Congress, first session). Another portion was hypothecated to the banks of South Carolina and Georgia, as security for a loan of \$222,015, and \$192,331 of this loan was disbursed directly by a disbursing agent of the State, in payment of "expenses of Indian hostilities," including pay of volunteers (Ex. Doc. 203, Forty-seventh Congress, first session).

This case is one where the Government, through the President of the United States, by the Secretary of War, promised to pay these troops when mustered into the United States service, and they would have been long since paid by the Government if so mustered, but the mustering officer arrived in the State after they had been mustered out, and the State was compelled to borrow money with which to pay them (see letter of Secretary of War, hereto appended).

Congress has universally paid interest to the States where they have paid interest. We cite the cases where interest has been allowed and paid for moneys advanced during the war of 1812-15, as follows: Virginia, Act March 3, 1825 (4 Stat. at L., p. 132); Maryland, Act May 13, 1826 (4 Stat. at L., p. 161); Delaware, Act May 20, 1826 (4 Stat., at L., p. 175); New York, Act May 22, 1826 (4 Stat. at L., p. 192); Pennsylvania, Act March 3, 1827 (4 Stat. at L., p. 241); South Carolina, Act March 22, 1832 (4 Stat. at L., p. 499); Maine, Act of March 31, 1851 (9 Stat. at L., p. 626); Massachusetts and Maine, Act of July 8, 1870 (16 Stat. at L., p. 198).

For advances for Indian and other wars the same rule has been observed in the following cases: Alabama, Act of January 26 (4 Stat. at L., p. 344); Georgia, Act March 31, 1851 (9 Stat. at L., p. 626); Georgia, Act March 3, 1879 (20 Stat. at L., p. 385); Washington Territory, Act March 3, 1859 (11 Stat. at L., p. 429); New Hampshire, Act of January 27, 1852 (10 Stat. at L., p. 1); California, Act of August 5, 1854 (10 Stat. at L., p. 582); California, Act August 18, 1856 (11 Stat. at L., p. 91); California, Act June 23, 1860 (12 Stat. at L., p. 104); California, Act July 25, 1868 (15 Stat. at L., p. 175); California, Act March 3, 1881 (21 Stat. at L., p. 510); and in aid of the Mexican war (see statute of June 2, 1848).

Attorney-General Wirt, in his opinion on an analogous case, says:

The expenditure thus incurred forms a debt against the United States which they are bound to reimburse. If the expenditures made for such purpose are supplied from the Treasury of the State, the United States reimburse the principal without interest; but if being unable itself, from the condition of its own finances, to meet the emergency, such State has been obliged to borrow money for the purpose, and thus to incur a debt on which she herself has had to pay interest, such debt is essentially a debt due by the United States, and both the principal and interest are to be paid by the United States (see Opinions of Attorneys-General, vol. 1, p. 174).

Thus it will be seen that the precedent for the payment of interest, under the rule adopted for the settlement of claims of war of 1812-15, and Indian wars above cited, is well established.

The committee are of the opinion that the urgent necessity for the services of these troops, and the action of the President and Secretary of

War, are well established, and create an equitable obligation on the part of the General Government, and as it is clearly shown by Ex. Doc. 203, Forty-seventh Congress, that the State of Florida not only borrowed money from the Indian Trust Fund, but also from the banks of the States of Georgia and South Carolina, for their payment, upon which the State has since paid interest, your committee have concluded to recommend the passage of the bill, with the following amendments:

In line eighteen, of Section 1, after the word "it," insert the words "upon said claim or claims."

In line eight, of Section 2, strike out the words, "and to pay such sum so ascertained due the said State," and insert the words, "and shall adjust and settle the claim of the State therefor, and shall pay such sum as may be ascertained to be due the State thereon."

WAR DEPARTMENT, WASHINGTON, D. C., May 21, 1857.

SIR: I have the honor to acknowledge the receipt of your letter of the eighth instant, asking an approval of the services of certain volunteers called out by you, and in reply to inform you that the explanation as to the necessity of their services is satisfactory, and orders have been issued to the officer commanding in Florida to muster them in and out of the service of the United States.

Very respectfully, your obedient servant,

JOHN B. FLOYD, Secretary of War.

His Excellency James E. Broome, Governor of Florida.

Forty-ninth Congress, first session. House of Representatives. Report No. 518.

## ADVANCES MADE TO UNITED STATES BY MARYLAND AND VIRGINIA.

February 13, 1886—Committed to the Committee of the Whole House on the state of the Union, and ordered to be printed.

Mr. Shaw, from the Committee on Claims, submitted the following

### REPORT.

[To accompany bill H. R. 1065.]

The Committee on Claims, to whom was referred House bill 1065, submit the following report:

Bills similar in all respects to that referred to this committee have been before Congress since the Thirty-first Congress. The records of Congress show the following reports recommending the passage of bills for the payment of these claims:

September 16, 1850, Thirty-first Congress, first session, H. R. 494, by McDaniel, from Committee on Claims.

May 29, 1850, same Congress and session, from the Senate Committee on Claims, by Senator Underwood.

January 6, 1852, Thirty-second Congress, first session, H. R. 2, by Mr. Rantoul, from Committee on Claims.

January 30, 1852, Thirty-second Congress, first session, S. R. 59, by Mr. Brodhead.

—, 1853, Thirty-second Congress, first session, S. R. 278, by Mr. Kerr, from Committee on the Judiciary.

May 20, 1884, Forty-eighth Congress, first session, H. R. 1563, by Mr. Mayberry, from Committee on the Judiciary.

This bill was before the Committee on the Judiciary of the House for the Forty-eighth Congress; was then fully considered and favorably reported and placed on the calendar of the Committee of the Whole House. Your committee have reexamined all the reports, documents, and State papers, as well as the contemporaneous history relating hereto, and again recommend the passage of the bill, and adopt the report of the Committee on the Judiciary of the Forty-eighth Congress, with some additions thereto.

During the Revolution the Congress assembled in places which were rendered available by the varying circumstances of the war then being waged. Philadelphia, Lancaster, and York, in Pennsylvania; Princeton and Trenton, in New Jersey; Annapolis, in Maryland, and New York City were severally honored by the meetings of this assemblage. Before the treaty of peace, Philadelphia became and continued the seat of government until June, 1783. The mutiny of the Pennsylvania line, on account of arrearages of pay, compelled an adjournment of the sitting of Congress to Princeton, New Jersey. The causes which led to this sudden and unexpected adjournment of the Federal Congress from its established seat made the subject of a Federal Capital a fruitful source of discussion, continuing through the period intervening from 1783 to 1790. On the seventh of October, 1783, Mr. Gerry, then a member of the House of Representatives, gave definite shape to the discussion by proposing that the Federal buildings be provided on or near the banks of the Delaware or Potomac Rivers, with a vested right in the soil and exclusive jurisdiction for all governmental purposes in the Government of the United States. This proposition of Mr. Gerry received the approval of Congress at that time, but no definite steps were taken to further conclude the matter. On April 26, 1784, the action of Congress approving the proposition of Mr. Gerry was repealed without the assignment of any special reasons therefor.

On the thirtieth of October, 1784, three Commissioners were appointed by Congress to select and lay out a Federal District for the purposes of the Government, near the falls and on either side of the Delaware River. The Commissioners were authorized and empowered to purchase the land and to erect the necessary public buildings thereon. On account of the failure of Congress to make an appropriation, the purposes contemplated in the Act creating the Board of Commissioners were not carried into effect. On the thirteenth of February, 1785, an effort was made to substitute the Potomac for the Delaware River as a proposed site, which effort finally failed.

On the tenth day of May, 1787, Mr. Lee of Virginia, introduced a resolution providing for the erection of public buildings in Georgetown, on the Potomac. This resolution, like its predecessors, failed of adoption. The Constitution, adopted in 1787, provided for a Federal District, not exceeding ten miles square, for the permanent seat of Government. Action was not taken to give effect to this provision of the Constitution until the twenty-third of December, 1788, when Maryland passed an Act to cede to the United States a district of ten miles square, the Act leaving with Congress to decide where the exact site should be selected.

On the third of December, 1789, the State of Virginia passed an Act for the cession of a district ten miles square, and suggesting the selection of a site on the Potomac River, where "the States of Pennsylvania, Maryland, and Virginia may participate in such location." (Davis' Laws, District of Columbia, page 60.)

No action was taken by Congress upon either of these Acts until September 5, 1789, when a resolution passed the House of Representatives, establishing the seat of Government on the Susquehanna River. In the debates which ensued on that resolution, the word "Susquehanna" was struck out

and that of "Germantown" inserted. This resolution, which then took the form of a bill, passed the House, but failed to pass the Senate.

On the thirty-first of May, 1790, a bill was introduced in the Senate "to determine the permanent seat of Congress and the Government of the United States." Baltimore, Georgetown, Patapsco, and Havre de Grace were mentioned as desirable places for the Capital of the country. But, finally, the Act establishing "the temporary and permanent seat of Government for the United States" was passed July 16, 1790, fixing the banks of the Potomac River as the most desirable site. In compliance with this Act, President Washington visited Williamsport, Washington County, Maryland, but not liking the situation selected the present location, and upon his report the Act of March 3, 1791, was passed, amending that of July 16, 1790, and authorized the President to include Hunting Creek and the town of Alexandria in the Federal District. Thus the present District of Columbia was located.

It is shown by an Act of the General Assembly of Virginia, passed December 3, 1789 (13 Henning, page 33), that the establishment of a "situation for the seat of the General Government, central and convenient to the citizens of the United States at large, having due regard to population, extent of territory, and a free navigation of the Atlantic Ocean, through the Chesapeake Bay, as well as ready communication with our fellow citizens on the western frontier," engaged the attention of the said General Assembly, and on the tenth of December that General Assembly passed the following:

*Resolved by the General Assembly of Virginia, That a copy of the foregoing Act of the third of December, 1789, be transmitted to the General Assembly of Maryland without delay, and that it be proposed to the said Assembly to unite with this Legislature in an application to Congress, that in case Congress shall deem it expedient to establish the permanent seat of Government of the United States on the banks of the Potomac, so as to include the cession of either State, or a part of the cession of both States, this Assembly will pass an Act for advancing a sum of money, not exceeding \$120,000, to the use of the General Government, to be applied in such manner as Congress shall direct, towards erecting public buildings, the said Assembly of Maryland on their part advancing a sum not less than two fifths of the sum advanced by this State for the like purposes. (See Journal of the House of Delegates, p. 115.)*

The foregoing resolution was prepared and introduced into the General Assembly of Virginia by Hon. John Marshall, then a member thereof, and afterwards Chief Justice of the Supreme Court of the United States.

At the November session, 1790, the General Assembly of Maryland passed the following resolution:

*WHEREAS, By a resolution of the General Assembly of Virginia, passed on the tenth day of December, 1789, it was proposed to the General Assembly of Maryland that the General Assembly of Virginia will pass an Act for advancing a sum of money, not less than \$120,000, to the use of the General Government, and to be applied in such manner as Congress shall direct, toward erecting public buildings, the Assembly of Maryland on their part advancing a sum not less than three fifths of the sum advanced by the said General Assembly of Virginia; which resolution came so late to the last General Assembly of Maryland that it could not be acted upon, and was, therefore, referred to this present session; and whereas, this General Assembly doth highly approve of the object of said resolution, and is desirous of doing everything required on the part of Maryland for carrying the same into effect, on a second reading of said resolution.*

*Resolved, That this House doth accede to the proposition contained in said resolution of the Assembly of Virginia, and will advance to the President of the United States, for the purposes mentioned in said resolution, the sum of \$72,000, payable to his order in three equal yearly payments.*

On the twenty-fourth of December, 1790, the General Assembly of Virginia passed the following:



## AN ACT

*Concerning an advance of money to the Government of the United States for public buildings.*

WHEREAS, The General Assembly of Maryland have acceded to a proposition of the General Assembly of this commonwealth, contained in their resolution of the tenth day of December, 1789, concerning an advance of money to the General Government to be applied towards erecting public buildings at the permanent seat of the Government of the United States, should the Congress deem it expedient to fix it on the bank of the Potomac; and whereas, Congress has passed an Act for establishing the said seat of Government on the Potomac;

*Be it enacted by the General Assembly,* That \$120,000 shall be advanced by this commonwealth to the General Government, payable in three equal yearly payments, and to be applied towards erecting public buildings at the permanent seat of the Government of the United States on the bank of the Potomac, and the auditor of public accounts is hereby directed to issue his warrants on the Treasurer to the amount of \$120,000, payable in the manner hereinbefore directed, to the order of the President of the United States. (See 13 Henning, p. 125.)

The records of the Treasury Department of Virginia show, by certified copies, that the first payment of this advance to the United States was made April 15, 1791, and the last on January 8, 1795, and making, on the whole, the sum of \$120,000. And by the eleventh section of the Act of Maryland, passed December 19, 1791, it was—

*Resolved,* That the Treasurer of the Western Shore be empowered and required to pay the \$72,000 agreed to be advanced to the President by resolution of the last session of Assembly, in sums as the same may come to his hands as the appointed funds, without waiting for the day appointed for the payment thereof. (See Davis' Laws District of Columbia, p. 70.)

At the same time, to secure the prompt payment of the sum advanced, the Treasurer of the Western Shore was authorized to sell the "reserved lands to the westward of Fort Cumberland," and also "the lands lying in Dorchester County, and now in the possession of the tribe of Choptank Indians, to sell and convey the right of this State to one hundred acres of land at Fort Frederick, in Washington County." (See second volume Scharf's History of Maryland, p. 566.)

In the Act of neither State is allusion made to the site of the seat of Government being a necessary condition of the advance of money, except as may be inferred from the use of the words, "in case Congress shall deem it expedient to establish," etc., and these would have included and applied to the proposed location, which embraced Pennsylvania as well as Maryland and Virginia.

It is an established fact of history that very deep feeling was engendered in the discussion leading to the location of the seat of Government. The question became largely sectional, and at one time threatened to lead to a rupture of the Union. To ward off such deplorable consequences a location was sought at a point which would be considered central to territory and population, accessible to navigation, and convenient to the western frontier.

No contemporaneous authority has been produced or can be found which intimates that the Congress was influenced by the advances of Virginia and Maryland in locating the permanent seat of Government on the Potomac, nor can any line of history be shown that "in the then impoverished condition of the country a pecuniary argument of this sort had any influence on the question of location" of the Capital.

Chief Justice Marshall, writing the life of General Washington (volume 5, chapter iv, page 259), says:

At length a compact respecting the temporary and permanent seat of Government was entered into between the friends of Philadelphia and the Potomac, whereby it was stipu-

lated that Congress should adjourn to and hold their session in Philadelphia for ten years, during which time the buildings for the accommodation of the Government should be erected at some place to be selected on the Potomac, to which the Government should remove at the expiration of the term.

This compact having united the representatives of Pennsylvania and Delaware with the friends of the Potomac in favor of both the temporary and permanent residence which had been agreed on between them, a majority was produced in favor of the two situations, and a bill was brought into the Senate in conformity with the previous arrangement and passed both Houses by small majorities. This Act was immediately followed by an amendment to the bill then depending before the Senate for funding the debt of the nation. \* \* \* When the question was taken in the House two members representing districts on the Potomac, who in all previous stages of the business had voted against the assumption, declared themselves in its favor, and thus the majority was changed.

Not one word is said about "a pecuniary argument." Chief Justice Marshall's authority is selected because of all the public men of the times he best understood the motives underlying the action of Virginia in the matter of these advances. He had been a member of the Virginia House of Delegates from 1788 to 1793, when these advances were proposed. He knew that the title of the Act making the advance had been amended on final passage by changing the word "grant" to "advance," and his professional eminence at that early day precludes the supposition that he would in a public statute use the word "advance" to convey a gift or donation.

The location of the Federal Capital at its present site was the "sugar plum" which Mr. Jefferson said was given to the South for their adoption of the "Assumption Bill," which was a "bitter pill" to those States, and that it was necessary that some one consistent measure should be adopted to sweeten it a little to them. (Jefferson's Works, vol. iv, p. 448.)

The present location of the Federal Capital was a compromise settled upon higher considerations than would be involved in any advance of money which Virginia and Maryland could have offered.

In the fourth section of the Act of July 16, 1790, authority was given to the President to accept "grants of money," to be used in defraying the expenses of purchasing the site and erecting public buildings thereon. And it is contended that to this acceptance of grants his authority was clearly limited. It is further contended that the authorities of Virginia and Maryland were presumed to know and understand the provisions of this law; and it is further insisted that, despite the use of the word "advance," the moneys paid over by these States to the Government of the United States were paid in consideration of the location of the seat of Government at this point, assuming that from the present location benefits would accrue to the neighboring States sufficient to constitute a valuable consideration for their offerings.

As to the first objection, that the President was authorized to accept grants of money only, we may appeal with confidence to the words of President Washington in explanation of his understanding of the authority conferred upon him and of the action of the States in the premises. In a letter addressed to the Commissioners of the Federal District, written from Philadelphia under date of August 29, 1793, President Washington asks:

In what manner would it be proper to state the account with the States of Virginia and Maryland, they having advanced money which has not been all expended on the objects for which it was appropriated? (Letter on file in the State Department and cited in Rep. H. R. 494, Thirty-first Congress, first session; and in Report 5, Thirty-second Congress, first session.)

From this clause there is a clear inference that President Washington regarded this money as an advance, rendering necessary an account of it to be kept with those States.



It will not be seriously contended that the receiver of another's money will be permitted to assume the character of a beneficiary, when, by the express terms under which he has been made the receiver, a contrary intention is expressed.

While it is contended that it was the duty of the States to know the authority conferred upon the President to accept grants only, it may be contended with like force that it was the duty of the Government and its agents to take notice of the nature and provisions of the grant as expressed in the public Acts of the States, and in which they have carefully guarded their rights in the premises.

Again, Congress having failed to carry into effect the prior resolutions establishing the seat of Government, solely on account of its poverty and consequent inability to make the necessary appropriations therefor, it may be fairly urged on behalf of the claimants that the money advanced to the use of the Government was intended to avoid a repetition of previous failures. In confirmation of this intention to advance or lend, and not to grant their moneys, the historical fact is urged on behalf of the State of Virginia that an offer was made by the General Assembly of Virginia on the twenty-eighth of May, 1783, in the following words:

That if the honorable Congress should esteem the city of Williamsburg a fit place for their session, the Assembly will *present* them, on their removal thereto, and during their continuance therein, with the palace, the capitol, and all public buildings, and three hundred acres of land adjoining the said city, together with a sum of money not exceeding \$100,000 of this State's currency.

To this resolution is attached the following proviso:

*Provided always*, That should Congress thereafter remove from the city of Williamsburg, or from the land mentioned, that in such case the land so ceded, with the buildings, shall revert to the commonwealth.

It seems that this clearly demonstrates that when Virginia intended a *present*, she so expressed herself; and that when her intention was only to advance money to the use of the Government, she was equally guarded and explicit in her language. The journals of the House of Delegates clearly show that the use of the word "advance" was with peculiar deliberation, for one of the last acts in the final adoption of the Act was to amend the title by substituting the word "advance" for the word "grant," thereby causing an agreement between the title and the body of the Act. The Act of the State of Maryland follows strictly that of Virginia.

It is unnecessary to enlarge upon the use of the word "advance" as contained in these several Acts and resolutions; it has but one interpretation, which is that of a *right of reimbursement*. To interpret this word as used in the resolutions of Maryland and Virginia as originating a gift is forced and extraordinary. It is clearly used as implying and anticipating an accounting between the parties, and familiar instances of its use in this relation in commercial transactions will readily occur to the mind. It may tend to throw light upon the intention of the States in the premises to refer to the system of raising revenue prior to the adoption of the Constitution, which was by requisition upon the several States; and, although that system had been superseded by the mode now in use, yet it was at a period so very recent after the adoption of the present mode that habits and ideas growing out of the former system would still have their force and effect. How natural was it, then, that in making a loan to the General Government the States of Virginia and Maryland should make use of terms to

which they had become familiar under the Government, which had been so recently changed.

The advance of \$192,000 by Virginia and Maryland enabled President Washington to begin the actual construction of the public buildings, which gave a value to lands theretofore valueless. The building of the Capital converted a wilderness into city lots, the proceeds of the subsequent sales of which enabled the Commissioners to continue the work on the public buildings until 1798, when the first appropriation from the Federal Treasury was available.

In a letter to Thomas Jefferson, Secretary of State, dated March 31, 1791, General Washington says:

The terms entered into by me on the part of the United States with the landholders of Georgetown and Carrollsburg are, that all the land from Rock Creek along the river to the Eastern Branch, and so upwards to or above the ferry, including a breadth of about one and one half miles, the whole containing from three thousand to five thousand acres, is ceded to the public on condition that when the whole shall be surveyed and laid off as a city (which Major L'Enfant is now directed to do), the present proprietors shall retain every other lot; and for such part of the land as may be taken for public use for squares, walks, etc., they shall be allowed at the rate of £25 (\$66 67) per acre, the public having the right to reserve such parts of the wood on the land as may be thought necessary to be preserved for ornament; the landholders to have the use and profits of all the ground until the city is laid off into lots, and sale is made of these lots, which by this agreement become public property. Nothing is allowed for the ground which is occupied as streets and alleys. (See Sparks, x, p. 147.)

Mr. Jefferson, replying under date of April tenth, says:

The acquisition of ground is really noble, considering that only £25 an acre is to be paid for any ground taken for the public, and the streets not to be considered, which will in fact reduce it to about £19 per acre. (Varnum, p. 27.)

In the report of Thomas Monroe, Superintendent of Public Buildings, dated February 27, 1816, and embracing the receipts and expenditures in relation to the public buildings from 1791 to 1816, the moneys advanced by Virginia and Maryland are carried into the general accounts of receipts, with appropriations from the Federal Treasury and with the proceeds of the sales of lots and other property. In the report of the Committee on Public Buildings, made to the House of Representatives on February 16, 1820, the following language is used:

Before closing their report the committee think it proper to observe that in so far as the public buildings have advanced, the unexpected expenses of their repairs, since their completion, inclusive, the appropriations heretofore made, and to be made, until they are completed, can only be considered for the most part as advances made at the Federal Treasury, which will be reimbursed by the sales of the public property in the city of Washington, which has cost the Government but little. At the time of the cession of this property as the seat of government, it, the property, was considered as a source of revenue which would be amply sufficient for the erection of the public buildings, and if the document herewith presented, marked D, is not unreasonable, it will yet be sufficient to complete such as are undertaken. But for their destruction, there is no doubt of the correctness of the calculation made many years since of the sufficiency of the funds for its object.

Document D, referred to, concludes that—

If this expectation should be realized, it will appear that the public buildings have been erected from the proceeds of property created by locating the seat of government in this place, and that a fund will remain for further improvements.

Mr. Meigs, in a report from the Committee on the Expenditures upon the Public Buildings, made to the House of Representatives March 21, 1820, remarks that—

It appears that the valuation of the public lots and actual amount of sales, added to the donations from the States of Virginia and Maryland, exceed the national expenditure upon public buildings by nearly \$400,000. (See American State Papers, vol. 11, Miscellaneous.)

Thus it appears from reports of commissioners and committees that the Government has realized more from the sales of lots than it paid from the Treasury, as well as a large sum in excess of the amount advanced to its use by the States of Virginia and Maryland.

The land obtained by President Washington would have remained of little value but for the action of Virginia and Maryland advancing \$192,000, which, giving a fixity and permanence, by actual construction of the public buildings, to the national capital, and imparted to the wilderness the quality of city lots. This \$192,000 not only started the public buildings, but it also augmented the value of the public property obtained from the landholders, by making the construction of the public buildings certain, which, without that action by these States, could not have been begun, as the Congress had not appropriated any money for the public buildings. In this double light, first, of enabling the commissioners to go on with the public buildings, and, secondly, of the value imparted to the city lots, must the action of these States be reviewed. So far from being a mere selfish act to secure the benefits of adjacency to the Federal Capital, this advance by these States was the means of making valuable the whole property acquired by President Washington for the Government. The site of the Capital on the Delaware had been abandoned for want of money to commence the public buildings. A like fate overhung that on the Potomac, and would probably have overtaken it had not Virginia and Maryland furnished the first money that gave impetus and life to the young Capital.

It is inconceivable that any two States of the Union would, for nearly fifty years, by joint resolutions of their General Assemblies, unanimously adopted, persistently instruct their Senators and request their Representatives to urge upon the Congress the payment of an improper claim.

The General Assembly of Maryland, by joint resolution in 1842, and by the testimonials of her agents in 1832, and by joint resolutions of February 20, 1878, and again by joint resolutions of 1882, and the State of Virginia by joint resolutions of 1850, and subsequently, have urged upon the Congress the payment of these advances.

It is not possible that Legislature after Legislature in two States, from 1842 to 1884, could have been so constituted as not to have contained a single member in either house who would not have questioned and denied the right of the States to a return of this money, if the law and the facts of history had not, in the opinion of the Legislatures of these States, fully established these transactions to have been advances, and not grants, gifts, or donations. It is contended that these States have slept upon their rights in the matter of their claims, but it must be remembered that the Government has not always been in condition to meet these demands, not being out of debt until 1837; and it can be justly urged that the Government, being the recipient of the favor, should have made the first movement towards its repayment.

The long delay, the very "staleness of this claim," is consonant with the very spirit of the transaction and with the very essence of an advance. These States designed that the infant Government of the United States, then without money or credit, should enjoy the use of their money so long as the United States was burdened with debt and unable to repay without embarrassment. In that spirit no demand for repayment was made while the revolutionary debt and the debt of the war of 1812-15 were unpaid.

The first surplus of any amount in the United States Treasury was reported in 1836, and was distributed that Winter. The panic of 1837 so prostrated all kinds of business that only three fourths of the surplus was distributed; the remaining fourth never was distributed. There was no surplus again reported until 1841, and Maryland made her demand in 1842, and Virginia in 1850. Thus early these States instituted steps for the collection of these advances; their applications have been favorably considered by committees of the House and Senate, and upon two occasions bills for their relief have passed the Senate but failed to be reached in the House.

The Government has neglected its duty in this regard, and the States, after a lapse of nearly half a century, and embarrassed in their own financial affairs, and when in the meantime the Government had become prosperous and wealthy, sought, and have been constantly seeking, to reclaim these advances. In a transaction marked with such patriotic devotion, it was not unbecoming in the States to wait long and patiently in expectation that the money advanced would be tendered without the embarrassment of a demand.

The States of Maryland and Virginia now, through their respective Legislatures, request the repayment of their advances, and by such request have placed a construction upon the acts of their States which it would be unjust and ungrateful for the Government as a beneficiary to reject or deny.

It may not be without propriety to close this report with the remarks of distinguished Senators upon a bill similar to that referred to this committee. In the debate in the Forty-third Congress on a bill for the relief of the State of Virginia—

Mr. Seward of New York. Mr. President: The State of Virginia, beyond all doubt, contributed to the erection of this Capitol and of those public edifices which we now use for the Government of the United States the sum here specified. She either *advanced* that money as a loan to be repaid at some future time, or she gave it to the Government of the United States. If this money was *advanced* as a loan, the advance created a debt which it is now the duty of the Government to discharge. If, however, the money was contributed by way of gift or donation to the Government of the United States, I do not see that it materially alters the case. In the one case there would be an obligation already existing, a debt already to be paid for money which has been borrowed. In the other case there is an advance which is the basis of a moral obligation which the Government may at any time recognize and assume, and that creates the debt. \* \* \* This moral obligation strikes me as peculiarly appealing to the sense of honor of the Government of the United States. We are here occupying an edifice which was in part built for us by the State of Virginia; she is comparatively poor; we are only too rich. I think it does not comport with the pride and dignity of the United States that Congress and the executive departments should occupy halls for which they are indebted in whole or in part to the generosity of the States. \* \* \* I am for discharging this obligation and securing to ourselves the right to feel that this Government owes nothing but gratitude to these States.

Mr. Fish of New York. Mr. President: I shall vote for the appropriation of this money with great pleasure. I do not care to consider the question whether this money was originally loaned or granted. It is enough for me that the States now claim it as a loan, and I am willing to vote to pay them. \* \* \* I vote for this bill on the pure merits of the claim.

Mr. Wade of Ohio. The language connected with the original grant—it being sometimes called a gift, sometimes a donation, sometimes an advance, sometimes one thing and sometimes another—would seem to imply that perhaps it was not then expected the money would be repaid. All these considerations, however, did not satisfy me that we ought not to repay the money. I care but little what the expectation was at that time. If these States, actuated by magnanimity, and for the purpose of advancing the public good, gave us money to erect the public buildings at that day, when our Treasury was comparatively empty, and when it was really an object to have such a donation, I would repay them. \* \* \* The great stubborn fact still stands out, that while the nation was poor we availed ourselves of the generosity of those States and took the money which they offered. Whether by way of gift or loan I care not. At all events, those who had the right to say on what conditions they granted the money, now say it was by way of advancement, to be repaid at some convenient time in the future. On this question I will not stand here to contend with a sovereign State. When she has made an advancement or loan, or even a donation, if you please to call it so, and we have availed ourselves

of its benefits, I will not, when she asks to be repaid, and when we have an overflowing Treasury, stand here to say that the money was a gift, and therefore ought not to be paid. \* \* \* I do not wish to have this Government indebted to any State in this Union or to anybody. I shall feel that it is under an obligation to the States of Maryland and Virginia until this money shall have been paid. In my judgment, the money ought to be repaid. \* \* \* It was a noble, generous act, and we ought now to respond to it in the same spirit.

Upon the question of interest to be computed in cases like those pending, not only does simple justice demand such computation, since a repayment of the money was first demanded by the States, but numerous precedents sanction this course.

Among the Acts passed to provide for paying interest on such advances made by the States and Territories in the past may be cited those on account of the war of 1812 and 1814, for the Indians wars, and for the Mexican war.

The payment of advances made for the use of the Government in the Mexican war was provided for by a *general Act* passed June 2, 1848, which contains the following provision with reference to interest:

That in refunding money under this Act it shall be lawful to pay interest at six per centum per annum on all sums advanced by States, corporations, or individuals, in all cases where the State, corporation, or individual has paid or lost interest, or is liable to pay it. (9 Stat. L., p. 236.)

In the report of the Committee on Claims of the Senate (Report No. 8, Forty-ninth Congress, first session), reported January 6, 1886, the question of the payment of interest by the United States Government is fully and elaborately discussed, and fifty-three statutes from the Statutes at Large are quoted showing it to have been the practice of the Congress to allow interest.

Reference is particularly made to that report for the discussion of the general question of paying interest, and to the following examples selected from said Senate report on payment of interest on "advances:"

5. An Act approved May 3, 1802, provided that there be paid Fulwar Skipwith the sum of \$4,550, advanced by him for the use of the United States, with interest at the rate of six per cent per annum from the first of November, 1795, at which time the advance was made. (6 Stat. L., p. 48.)

27. An Act approved May 5, 1824, directed the Secretary of the Treasury to pay to Amasa Stetson the sum of \$6,215, "being for interest on moneys advanced by him for the use of the United States, and on warrants issued in his favor in the years 1814 and 1815 for his services in the Ordnance and Quartermaster's Department, for superintending the making of army clothing, and for issuing the public supplies." (6 Stat. L., 298.)

41. An Act approved February 17, 1836, directed the payment of the sum therein named to Marinus W. Gilbert, being the interest on money advanced by him to pay off troops in the service of the United States, and not repaid when demanded. (6 Stat. L., 622.)

45. An Act approved July 7, 1838, provided that the proper officers of the Treasury be directed to settle the accounts of Richard Harrison, formerly consular agent of the United States at Cadiz, Spain, and to allow him, among other items, the interest on the money advanced, under agreement with the Minister of the United States in Spain, for the relief of destitute and distressed seamen, and for their passages to the United States, from the time the advances respectively were made to the time at which the said advances were reimbursed. (6 Stat. L., 734.)

That report further says that—

The prevalent idea that "the Government never pays interest" has grown up from the practice of the departments which do not allow interest except where it is specially provided for in cases of contracts or expressly authorized by law. But this usage and custom of the executive departments cannot be properly regarded as the settled rule and policy of the Government, for its action upon the subject of interest has not from the earliest time conformed to such usage. On the contrary, it will be found, upon an examination of the precedents where Congress has passed Acts for the relief of private citizens, that in almost every case, except those growing out of the late war, Congress has directed the

payment of interest where the United States had withheld a sum of money which had been decided by competent authority to be due, or where the amount due was ascertained, fixed, and certain. The highest Court of the country has also affirmed this to be not only the practice of the Government, but the measure of its duty. Thus, in 15 Wallace, p. 77, where the suit was against a United States Collector for the recovery of taxes illegally collected, the Supreme Court used the following language upon the subject of interest allowed on the claim, viz.:

"The exception is to the instruction that if the jury found for plaintiff they might add interest. This was not contested upon the argument, and we think it clearly correct. The ground for the refusal to allow interest is the presumption that the Government is always ready and willing to pay its ordinary debts. Where an illegal tax has been collected, the citizen who has paid and has been obliged to bring suit against the Collector, is entitled to interest in the event of recovery from the time of the alleged execution."

The Senate report from which the above extracts are taken forcibly states that:

Your committee have directed attention to these numerous precedents for the purpose of exposing the utter want of foundation of the often repeated assumption that "the Government never pays interest." It will really be admitted that there is no statute law to sustain this position. The idea has grown up from the custom and usage of the accounting officers and departments refusing to allow interest generally in their accounts with disbursing officers, and in the settlement of unliquidated domestic claims arising out of dealings with the Government. It will hardly be pretended, however, that this custom or usage is so "reasonable," well known, and "certain" as to give it the force and effect of law, and to override and trample under foot the law of nations, and also the well settled practice of the Government itself in its intercourse with other nations.

A great Government like ours, with unlimited resources and revenues at its command, should above all things deal justly with its citizens, and certainly with the States, and particularly when the States have dealt so liberally and generously with the Government, as Maryland and Virginia did when they advanced the money to construct the public buildings at Washington.

Senator Sumner (Report No. 4, Forty-first Congress, first session, p. 10) remarks that:

If the claim is just, the precedent of paying it is one which our Government should wish to establish. Honesty and justice are not precedents of which either governments or individuals should be afraid.

Your committee therefore recommend the passage of the accompanying bill.

#### VIEWS OF THE MINORITY.

The undersigned, from the Committee on Claims, cannot concur in the report of the majority on the bill (H. R. 2504) to provide for paying certain advances made to the United States by the States of Maryland and Virginia. The proposition embodied in the bill seems to have been before Congress in one stage or another for at least thirty years. In the Forty-eighth Congress, first session, the bill was referred to the Judiciary Committee, and the views of the minority thereon were as follows:

#### VIEWS OF THE MINORITY OF COMMITTEE.

The undersigned, members of the Committee on the Judiciary, are of opinion that the States of Virginia and Maryland have no claim to be reimbursed by the United States for the sums furnished by those States toward the erection of the first National public buildings at Washington.

It is well known that both before and after the adoption of the Federal Constitution there was a serious conflict of opinion as to the proper location of the National Capital. A great number of places were claimants for it, and a great variety of considerations entered into the question. Some might be called general, or between the different sections of the country, but to a large extent it was a strife between particular localities, governed by the ordinary selfish reasons of benefit to their locality and special advancement. The special advantages of such location within a State, or in immediate proximity to it, were far greater at that day, when the facilities for travel and communication were so slow and tedious, than they would be now when railroad and telegraph lines have nearly obliterated time and distance. That Virginia and Maryland should have felt a

great anxiety to have the National Capital located upon the banks of the great navigable river flowing between them was very natural, and that to secure such great advantages they should be willing to bear something more than their share of the expense, and use that as an argument in favor of their location, was also natural and probable.

In the then impoverished condition of the country a pecuniary argument of this sort would have an influence on the question of location that at this day can hardly be imagined. So long a time has elapsed, and the records of that time are so meager, that the purposes and motives of the actors in these early transactions must be determined very much by what seems reasonable and probable.

The State of Virginia, in 1789 (and before the Act of Congress of July, 1790, fixing the permanent seat of government), passed a resolution proposing to advance \$120,000 to be applied toward the erection of public buildings, "in case Congress shall deem it expedient to establish the permanent seat of government of the United States on the banks of the Potomac," and also that "the Assembly of Maryland should, on their part, advance a sum not less than two fifths of the sum advanced by this State for the same purpose."

After this action by Virginia Congress passed the Act of July, 1790, fixing the seat of government on the banks of the Potomac.

The fourth section of that Act authorized the President to accept "grants of money" to be used in defraying the expense of purchasing a site and erecting public buildings thereon.

In our judgment there is no room for doubt that this provision was inserted in view of the action of Virginia and the expected action of the State of Maryland, and shows, in the clearest possible manner, that Congress understood the proposition to be one of a gift of money by those States, and not a proposition to make a loan.

Two considerations seem to the undersigned quite conclusive that the proposition was intended as one of gift and not of loan:

*First*—That the proposition to loan such a sum of money, to be repaid, should be offered, conditioned upon a certain location. Upon its very face it appears that the offer was expected to influence the location, and if it was only an offer of a loan, it seems trifling.

*Second*—If the affair was only a loan it seems singular that such offer should be on condition that Maryland should also make a lesser, but proportional loan. Treated as a *grant* or *gift* these conditions are harmonious and reasonable; but on the theory of a loan of money, to be repaid, they seem trivial. The majority report assumes that the word used in the resolutions of both States, *advance*, imports a loan.

We deny this. That is not either the legal or ordinary use of the word. In the case of a loan of money, to be repaid, the word is never used. A factor or consignee of goods for sale advances a part of the price to the owner, for which he holds a lien on the goods to be taken from the proceeds of the sale. A man advances money to the contractor who has contracted to build his house, to be reckoned as a part of the contract price.

A parent advances money to his child, to be reckoned as a portion of the child's share in his estate when divided. But on a loan of money, which creates a debt, to be repaid, we know of no such use of the word, and we think it does not import a loan.

The word might be used so that in connection with the surrounding circumstances it might establish a loan; but its use in this case, connected with the circumstances under which it was used, proves quite the contrary.

But whatever may be the construction or legal meaning of the word "advance," as used by Virginia and Maryland in their resolutions, there is no doubt or dispute as to the Act of Congress under which the money was paid. The President was authorized to accept "grants of money." He was not authorized to borrow money or accept loans of money.

The majority of the committee argue that if a party accepts money of another, he accepts it as offered, and that he cannot change the character of the transaction by saying he accepts it for a different purpose or upon other terms. This may be true as between individuals, but when a party pays money to a public officer who has been authorized by law to receive it for a particular purpose, and upon special terms, he must be held to accept those terms, because otherwise the officer has no official authority to receive the money.

The reference to the letter of General Washington, we think, proves nothing in favor of the proposition that this was a loan to be repaid. The Government was bound to use the money for the purpose for which it was given. The commissioners to expend the money were bound to keep an account of all moneys received and expended by them from whatever source the money came.

When General Washington's letter was written, in 1793, it appeared that the money received from Virginia and Maryland had not all been expended on the objects for which it was appropriated. It was this state of things to which General Washington was referring, and not at all to any obligation to repay a loan. If it was a loan, and to be repaid at all events, it was not of much consequence what were the details of the expenditures.

The report of Mr. Meigs, referred to in the majority report, speaks of these moneys as "*the donations of Virginia and Maryland.*" Nothing appears in all the early history of this matter, in our judgment, to show that anybody then thought of any repayment of this money, or that it was anything but a donation or gift.

The benefits derived by the Government from the arrangement with the land owners, by which the lots of the new city were divided between them, does not seem to have anything to do with the question. This was a contract with private parties, and not with Virginia or Maryland.

The undersigned, notwithstanding the staleness of this claim, would not suggest that as

any bar to its allowance, if they could feel there was ever a just claim. It was fifty years before Maryland set up any claim to have this money repaid, and nearly sixty years before Virginia waked up to her rights in this respect. It is said that during this time the National Government was poor, and these States acted the ordinary part of a rich and lenient creditor to a poor debtor. But years before either State made any claim to have this money repaid, the Treasury of the United States had become so plethoric that they had to resort to the doubtful relief of distributing its surplus to the States. We think it may at least be suggested that the long delay to assert this claim by these States arose from a consciousness that no such claim existed. A word as to the action of a former Senate, and the debate on this claim by former eminent Senators, will conclude all we desire to say.

Each of the Senators who participated in that debate stated that, in his judgment, it made no difference whether this money, advanced by these States, was as a gift or a loan, that in either view it ought to be repaid. We do not agree at all with those eminent Senators. If the Government borrowed this money, and has not paid it, it ought to do so; but if the money was given by these States to the United States, and especially if it was given in view of securing greater benefits to themselves thereby, as we think it was, then there is no obligation on the part of the United States to return the money, and there is no more justice in returning it, or constitutional power to return it, than to make a gift to any other State or person.

The books of the Treasury Department do not show that this claim was ever recognized as an obligation of the Government, in any form or in any sense. But it does appear that within a few years after the National Capital was located at Washington the United States borrowed several hundred thousand dollars from the State of Maryland, which was to be paid in four annual installments, and that the same was paid in installments as agreed.

If this claim now made by Maryland was then understood to have been a loan, it is very singular that it should not have been presented and adjusted. This fact furnishes another quite conclusive reason to our minds that this money was understood to be a donation, and not a loan.

LUKE P. POLAND.  
S. W. MOULTON.  
M. A. MCCOID.  
THOMAS M. BROWNE.  
E. B. TAYLOR.  
T. B. REED.  
H. BISBEE, Jr.

While admitting that the word *advance* sometimes imports a loan, yet because of the remaining reasons set forth in the "views" above recited, the undersigned cannot concur with the majority. As to the allowance for interest, it may be observed that there was no evidence produced showing that the State of Virginia ever paid any interest upon the specific sum. Maryland seems to have disposed of some of her public domain to raise her amount. Another consideration ought not to be lost sight of. The Government of the United States is now the holder of a large number of bonds of the State of Virginia, upon which remains unpaid large arrears of interest. There is also charged against the State of Virginia upon the books of the Treasury Department for unpaid taxes, under the Direct Tax Act of 1861, the sum of \$213,501 30. Not only is no provision made in the bill for the offsetting of either of these items, but the bill expressly authorizes and directs the Secretary of the Treasury to pay to the Treasurers of the States of Maryland and Virginia the amounts found to be due them, respectively, under the provisions of this Act.

JAMES BUCHANAN.  
WM. WARNER.

Forty-ninth Congress, first session. House of Representatives. Report No. 519.

## CLAIM OF CERTAIN STATES AND THE CITY OF BALTIMORE.

February 13, 1886—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Trigg, from the Committee on Claims, submitted the following

# REPORT.

[To accompany Bill H. R. 2948, with amendment.]

The Committee on Claims, to whom was referred the bill (H. R. 2948) directing the Secretary of the Treasury to examine and settle the accounts of certain States and the City of Baltimore, growing out of moneys expended by said States and the City of Baltimore for military purposes during the war of 1812, have had the same under consideration, and ask leave to submit the following report:

During the war of 1812-14 with Great Britain, the States of Massachusetts, New York, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, and the City of Baltimore, expended certain moneys for military purposes. After many years the United States, acknowledging the debt to be just and payable with interest, refunded the money with interest; but the rule of casting interest that was applied was to compute interest on the sum advanced by the State from the date of advancement up to the time of refunding to the State by the United States any portion of the sum advanced, deduct the sum refunded from the advancement, and then compute interest on the balance; and so on until the final payment of the principal. The aggregate of the interest column so computed was the amount of interest paid (see Second Auditor's Report of October 30, 1858). In other words, the payments were applied first to the payment of the principal, and after the principal was wholly extinguished, then to the several items in the column of interest.

Against this mode of computing interest the States formally protested (S. Doc., second session Twenty-second Congress, 1832-33). It was a plain neglect and refusal of the United States to refund the whole amount borrowed. To illustrate: Suppose, in the emergency of war, Virginia, one of the States, should borrow a million of dollars at six per cent, and advance the amount to the United States. Sixteen years afterward, when the interest would about equal the principal, the United States should refund a million, but insist that it shall be applied to the payment of the principal. Sixteen years afterward another million is refunded, and it is applied to the payment of the item of interest; the interest not bearing interest, the whole debt, principal and interest, would be paid, according to this mode of adjustment. Meanwhile Virginia has paid her creditors one million of interest during the first sixteen years, another million during the second period of sixteen years, and still owes the million of principal. Virginia, in the case supposed, paid out a million dollars more than the United States refunded. If one borrowed a thousand at six per cent to lend a friend in distress, and after sixteen years the friend should repay a thousand dollars, but compel the lender to accept it in full of the principal, and sixteen years afterward should pay another thousand dollars in full of the interest, leaving his friend still in debt for the principal, what Court would sanction such a settlement, and what justice would there be in it? Yet such is the treatment received by the States that made advances to the United States in the war of 1812-14. It is evident that the United States have not refunded in full the advances made by the States embraced in this bill.

It was not until the Act of March 3, 1857, that partial redress was obtained. By that Act a reëxamination and readjustment of the account

of the State of Maryland was directed to be made, and it was provided that in the calculation of interest the following rules should be observed:

Interest shall be calculated up to the time of any payment made. To this interest the payment shall be first applied, and, if it exceeds the interest due, the balance shall be applied to diminish the principal; if the payment fall short of the interest, the balance of interest shall not be added to the principal so as to produce interest. Second, interest shall be allowed on such sums only on which the State either paid interest or lost interest by the transfer of an interest-bearing fund.

Under this Act Maryland received the additional sum of \$275,770 23, and on the eighth of July, 1870, an Act was passed directing the accounts between the United States, and Massachusetts and Maine, to be reopened and readjusted, and Massachusetts received the sum of \$678,362 42, of which one third was allotted to the State of Maine as an integral part of Massachusetts when the advances were made.

Previously to this period, however, the account between the United States and the State of Alabama had been settled on the basis of the Maryland settlement. Indeed the bill now under consideration passed the Senate of the United States by a vote of thirty-three yeas to nineteen nays, on the — day of —, 1857. It went to the House of Representatives, which substituted for this bill the following, which was subsequently concurred in by the Senate, and stands as the ninth section of the Act of that session:

*And be it further enacted*, That the Secretary of the Treasury be instructed to report to Congress at its next regular session, all applications made by State authority of the States and cities for the reopening and reëxamination of the settlements heretofore made with such States and cities, and upon the principle of readjustment upon which such claims are based, and the amount thereof; and the Secretary of the Treasury is further instructed to report to Congress, at its next regular session, the gross amount that will be required to pay such claims to the States and cities of the United States. (11 Stat. at Large, p. 326, an Act making appropriations for civil service, approved June 12, 1858.)

The Secretary of the Treasury made his report at the next session of Congress, showing an aggregate, computing interest down to the date of his report, of \$1,588,521 69, as follows:

South Carolina .....	\$201,230 90
Virginia .....	1,076,683 35
Delaware .....	18,540 97
New York .....	48,896 21
Pennsylvania .....	218,507 71
City of Baltimore .....	23,662 55
Total .....	\$1,588,521 69

(See Ex. Docs., second session Thirty-fifth Congress, vol. 5.)

But, according to the same report, the following amounts only are due in principal to the several States:

South Carolina .....	\$78,996 41
Virginia .....	734,069 60
Delaware .....	6,341 99
New York .....	27,361 81
Pennsylvania .....	71,411 19
City of Baltimore .....	8,027 55

The principal amount due Virginia in the above report is evidently a mistake against the Government of the United States. The amount claimed by the State as approximately correct, is \$339,212.

These are the States embraced in this bill. None others have unsettled



accounts with the Government of the United States growing out of moneys expended during the war of 1812.

This bill proposes to apply to the above States that made similar advances the same rule of computing interest which was applied in the case of Maryland—a rule which has been long and firmly established by the decisions of the Supreme Court of the United States, by the practice of every State in the Union, and adopted for many years past by the accounting officers of the Treasury.

The bill gives simple (not compound) interest on any balance of principal that may be found unpaid, upon the proposed basis of settlement, until its payment by the United States. It provides for any and all proper offsets which the United States may have against any of the States hereby entitled.

In this particular your committee deem it proper to recommend and report an amendment to the bill referred to them, providing for the deduction of any balance due from any of said States on account of the direct tax apportioned by the Act of August 5, 1861, unless some general Act is passed otherwise disposing of the matter, and also providing that any unmatured bonds of any of said States held by the United States shall, with the interest due and unpaid to July 8, 1870, be credited and deducted in said settlement as of that date. The Government holds the bonds of the State of Virginia issued in 1860 to the amount of \$581,800, which will not mature until the year 1894, and also holds similar bonds of the State of South Carolina.

This date (July 8, 1870) was adopted by your committee because it seemed to them equitable and just.

On the first day of January, 1859, as shown by the report of the Secretary of the Treasury hereinbefore referred to, there was due the State of Virginia over \$1,000,000, of which more than two thirds was interest. She had been demanding a settlement and payment for years. Not being able to obtain what she asked, it is claimed that in her extremity she borrowed from the Government the amount represented by the aforesaid bonds. To require these bonds *not yet due* to be *now* paid with the interest due thereon, seems unjust, as it would in effect allow the Government in 1860, with a fund that should have paid a portion of the interest she then owed, to create an interest-bearing fund which would, if she should arbitrarily delay the settlement long enough, absorb the larger debt she justly owed the State. It was insisted that the bonds should be applied as a payment, or set-off, as of their date in 1860, but your committee, as before stated, adopted July 8, 1870, because that seemed to them equitable and just, and because at that time a similar bill for the relief of the State of Massachusetts was passed, and there seems no valid reason why the settlement should not then have been made with the other States.

In conclusion, the committee recommend a settlement of the accounts of the United States with the other States by the same rule of computing interest that was applied in the case of Maryland. It makes this recommendation because the rule itself is just and equitable; because, otherwise, the money advanced will not be fully repaid; because the rule has been applied to some of the States, and if applied to one should be applied to all; and because the rule has been repeatedly approved by the Supreme Court of the United States and sanctioned by the practice of every State in the Union, and for many years past followed in similar cases by the accounting officers of the Treasury.

Therefore, the committee report the accompanying bill with the follow-

ing amendment: At the end of said bill, in the twenty-fourth line, after the word "required," add the following, viz.:

*Also making a deduction as of the eighth day of July, 1870, of the amount of principal and interest due at that date upon any bonds of the said States, matured or unmatured, held by the United States, surrendering said bonds so far as they are included in said settlement; provided, also, that the balance remaining due of the direct tax apportioned to the State of Virginia by the Direct Tax Act of August 5, 1861, be held and treated as a proper set-off against the claims of the State of Virginia in the adjustment herein required, unless Congress shall otherwise provide by general law, releasing all claims for said direct tax or refunding all payments of such tax heretofore paid.*

And respectfully recommend its passage, and ask leave to submit as a part of this report, the following extracts from debate in the United States Senate on this subject (see Congressional Globe, volume 36, part 3, page 2540, first session Twenty-fifth Congress):

IN SENATE, MAY 31, 1858.

Mr. Iverson. No, sir; no more than was the case of the State of Maryland. The Act in relation to Maryland directs that "the proper accounting officers of the Treasury be and they are hereby authorized and directed to reexamine the accounts between the United States and the State of Maryland, as the same was from time to time adjusted under the Act," etc.

That proposed a reexamination of an account which had been adjusted, did it not? Precisely. Whether the account had been closed or not, whether it had been adjusted or not, whether it was still in existence or not, this Act directed the accounting officers to reexamine the account for interest, and make the computation on a particular basis. It was done in the case of Alabama. I desire to apply the same rule to all the States. It is just, equitable, and proper, if you apply it to two States, that you should give it to all. I do not know that my State is interested to any great extent. The State of South Carolina is interested, and her account has not been settled. The Controller of that State, in his report to the Governor, made a few years ago, states the difficulties between the accounting officers of the United States and himself. That account is still lying open. The State of South Carolina protested against the settlement by its officers at that time. This amendment will meet that case, and authorize the accounting officers to readjust the accounts of South Carolina on the basis applied to the State of Maryland. This amendment simply directs that the provisions and principles applied under the twelfth section of the Act of 1857, to Maryland, shall be applied to all the States. It does not reopen accounts.

Mr. Benjamin. Will the Senator from Georgia give us some information on one or two points suggested by his amendment? First—In what way this matter comes before the committee of which he is the organ? Is there a claim from the States? Has it been referred to the committee on behalf of the States?

Mr. Iverson. Yes, sir; a memorial from the State of South Carolina was referred to the Committee on Claims, and it was upon that memorial that the committee have predicated their amendment.

Mr. Benjamin. A general section.

Mr. Iverson. Yes, a general section, believing that it was equitable to apply the rule to all the States.

Mr. Benjamin. The next question I would desire to ask the Senator is: If he has any idea what the amount involved in this appropriation will be?

Mr. Iverson. I have no idea. The Comptroller of the State of South Carolina alleges in his report to the Governor of that State, which I have in my hand, that in the settlement between him and the accounting officers of the United States, the State of South Carolina lost \$55,000 in interest. That is the difference between the mode of computation of the accounting officers and the mode of accounting as regulated by the Act in relation to Maryland. I do not know how other States may be affected. I do not suppose the amounts are very large. I expect that the amount of the State of South Carolina is larger than that of any other State.

Mr. Benjamin. It does not seem to me that this section is liable to the objection made by the Senator from Virginia. This is not to pay a private claim of the State of South Carolina. It is a general rule by which the Treasury is to be guided in its settlements with the States; and we have already sanctioned the payments to some of the States on this basis; this section provides that even in cases which have already been closed by the Comptroller of the Treasury, not to the satisfaction of the State, as the Senator from Virginia suggests, but to the dissatisfaction of the State, the account shall be reopened and examined, and settled according to principles which we have declared to be just. The idea of applying a payment made at any time by the Government of the United States to the extinction of a part of the capital of the debt due to a State whilst there remains



interest unsatisfied, is contrary to all principle, to every rule by which computation of payments is made. The State of South Carolina having presented this memorial, if the proposition of the Senator from Georgia, now, was to pay that claim, I admit it would be a private claim; but the committee, instead of treating this as a private claim, preferred to report a section which amounts to a general law, for the very reason that they are not willing to act upon the claim of one State as a private claim. My State has no interest in this question; but I do think that justice requires that the adjustment of these accounts with the States should be made all upon the same footing; and, as it has already been made on this footing with the States of Alabama and Maryland, I cannot conceive why South Carolina should be made an exception, or any other State which has had accounts to adjust with the General Government. It is a general rule now provided by Congress for the settlement of accounts with States, and the mode of adjusting the interests that arise in accounts with States. It is not an appropriation for the benefit of the State of South Carolina. The committee, it appears to me, have carefully avoided reporting a private claim, and have *ex industria* changed the legislation into a general law. I do not see that it comes under the rule of the Senate which has been cited, and I shall vote for the amendment.

The Presiding Officer. Inasmuch as authority is given by the rules to take the opinion of the Senate on questions of this sort, and inasmuch as the facts in this case are disputed, the Chair will submit the question of order to the people.

Mr. Hamlin. I think the matter has been so clearly and so well stated by the Senator from Louisiana that really there can be no doubt about it. Certainly there is none in my mind; and I have only risen for the purpose of inviting the attention of the Senate to its action on other cases which I think are very similar, if not entirely parallel to this. We pass pension laws in which we prescribe the time of service; we prescribe the rules which shall entitle the person to a pension. We find, outside of that class of pensions, a very large class of cases that come very nearly up to the rules we have prescribed; they come here, and what is done? Our Committee on Pensions recommend this special case, and that special case, and they are passed. By and by we see there are so many special cases that we remove the limitation by general law, and it has been done in appropriation bills, precisely in the way now proposed.

I will cite an instance. We removed the limitations as to the time or mode of proof required at the Department, and that takes in a whole class of cases. True, if each one came here and asked action separately by itself, it would be a private claim; but you make a general law to include all cases. That is precisely this case.

I refer, now, to an instance in my mind, with regard to those who drew pensions for revolutionary service. You prescribed, originally, that only those widows of revolutionary soldiers should draw a pension who were married previous to 1783, I think. Then you limited it to 1794; and then you limited it to 1800, because you found such a large number of cases coming so nearly up to the time, that it was deemed advisable to extend it. The last amendment, I recollect distinctly, because I drew it, was ingrafted on an appropriation bill in 1853, and it was to meet a class of special cases here pending.

Mr. Green. I will inquire when the rule is to apply under the resolution adopted this morning, for a recess, to-day or to-morrow?

The Presiding Officer. To-morrow.

Mr. Green. Then I move that the Senate do now adjourn.

Mr. Hunter. I hope that we shall get through with this bill.

Mr. Green. We cannot get through, because I have an amendment to offer, and so have others.

Mr. Hunter. Let us hear them.

The motion to adjourn was not agreed to.

The Presiding Officer. Will the Senate receive the amendment proposed by the Senator from Georgia?

The amendment was received.

The Presiding Officer. The question now is on agreeing to the amendment.

Mr. Hunter. The amendment is a proposition which certainly ought to receive some examination before it is passed. We ought to know how much money it will take from the Treasury; we ought to know what changes it is to make in the principles on which accounts have been settled with States. I apprehend it will be found that it makes other changes besides the one which has been referred to by the Senator from Louisiana, the mode of stating the account as to interest and principal. I believe there have been some rules as to whether interest shall be allowed to States at all, and upon which settlements have been made with most of the States, and that will be changed if this provision be adopted; and it is probable that under the change it will be found that very large sums will be due to the States of this Union. I have no doubt that most of the old States would come in if this amendment be adopted, and some of them might claim very largely. This is eminently a subject for separate legislation. We ought to know what changes are made. We ought to know whether under this amendment we shall not pay to some States interest on claims on which interest has never been voted.

The first deviation, if I remember, was in the case of Alabama; but there it was determined to make certain allowances of interest, because the State had paid the interest, because it had sold stocks, as was done in Maine; and an exception was made in the case of Alabama for that reason. I believe that was the case also in Maryland, where the allowance was on the principle of the Alabama case. Unless you treat this as having arisen out of those exceptional circumstances, you will reopen all the settlements that

have been made with the States; and you will pass out of the Treasury a large sum of money, in my opinion. I speak, though, only from general recollection; I have had no time to examine the amendment particularly; but I am afraid it will be found when we come to see the effect of it—if it should be adopted—that it will go much further than any of us suppose.

Mr. Fessenden. The Senator from Virginia, if he would take the pains to read the amendment, would see that is not open to the objections he has stated. It does not provide, if I read it rightly, for the payment of any interest to a State, in any case whatever, where interest has not been allowed heretofore. It does not make any new claim in that respect. The whole amount of it is simply this: The Treasury, as I understand, has adopted the rule that where a certain amount of debt is owing to a State, and a certain amount of interest has accumulated on that debt, and where the principal thus owing bears interest, and the interest thus owing does not, if the claim is paid in part, they apply that part payment to the principal which bears interest, instead of to the interest which does not, thus reversing the rule which exists in every State in the Union and operating most unjustly towards the States themselves. For instance, suppose a debt is due to a State, which debt bears interest, and by the law at the same time there is an amount of interest accumulated upon it which does not bear interest—let us call one \$50,000 and the other \$30,000, the \$50,000 bearing interest and the \$30,000 not bearing interest. The Government, in these circumstances, instead of paying the whole, pay up \$30,000. Then, instead of applying it to the amount which does not bear interest against the Government, and which the State has paid, they apply it to the principal, reducing the claim which bears interest to \$20,000, and leaving the State to lose its interest on \$30,000.

Mr. Toombs. It is worse than that.

Mr. Fessenden. That is bad enough. The provision is, in regard to all these claims which the States have where the United States will not pay accumulating interest, as they ought to do, that the partial payment shall first go to sink the interest that is due. If a man owes me money, and interest has been accumulating year after year which he has failed to pay, and especially if I am in debt for it, as is very often the case with the States, he ought to indemnify me; but the rule adopted by the Treasury is worse than that. They say they will not only not indemnify me and leave me to pay my interest, but when they do make a payment it shall not go to sink the interest, but to sink the principal, leaving the interest to stand. That is unjust. It does not apply in the case of any private claim anywhere, but has been arbitrarily adopted by the accounting officers of the Treasury. In the case of Maryland, which was precisely similar, Maryland remonstrated, and at the last session Congress said that account should be adjusted upon proper principles—the same principles that exist in every State of the Union between man and man—that where principal and interest are due and the Government paid any part, that payment should be applied to the interest first; if it paid it off, very well; if it overbalanced it, the balance should be so much towards the principal. This was on the common, ordinary principles of justice.

In the case of the State of South Carolina, if I understand it, the officers went so far as to keep an account with the State, crediting her with interest accumulating on the principal, and if there was any left they then took the part they had paid, cast interest on that, and then offset the two! That is to say, they paid their interest in part and retained to themselves the right of offsetting the interest which accrued on their own payment of money due to the State to pay the rest of the debt with. [Laughter.]

It does not do to make it a matter of account current between the two, because the account is really all on one side; but the Treasury officers apply the principle of accounts current to it as if so much was due from Maryland and so much from the United States, and cast interest on both and then offset the two; but instead of that, it is all due from the United States. They say, "we will owe you the interest; we will pay you part of the principal; we will cast interest on the money we allow you and pay you interest with it." That is the principle they have adopted. This is simply to set that right and to say that where these things exist the Government shall do what is proper. \* \* \* Why, sir, what difference will it make how much money it amounts to? If there be more or less, the Government ought to pay and pay it at once, without the slightest hesitation, and calculate the interest upon proper principles.

The Maryland provision came from the Senator's own Committee on Finance, and was agreed to by the Senate. If it was proper in that case, why is it not in every other?

Mr. Hunter. I have stated that was made under peculiar circumstances; that I do not recollect perfectly. The Senator from Maryland can explain them. It will be found, I think, that they do not apply to other cases.

Mr. Pearce. I will state the facts in relation to the claim of Maryland. The State of Maryland advanced large sums of money to the Government of the United States during the war of 1812, and some time after the close of that war the United States reimbursed the principal. In 1812 an Act was passed for the payment of interest to the State of Maryland, and the interest was paid upon a mode of calculation novel to me, though I find it has been adopted as the usual rule of computation in such cases at the Treasury. That is to say, having determined to settle the accounts, and commenced to make payments on it, the first payment was applied to the reduction of the principal, the interest being made to stand aside; and so payments were made from time to time until the whole of the principal was liquidated; and then they went back to the period when they began to pay and ascertained what the amount of interest due at the time was, and paid

that sum without any interest on it. In 1829 or 1830 an Act was passed through both Houses of Congress authorizing the payment of interest to the State of Maryland upon the proper principle, such as prevailed in mercantile transactions, and it was vetoed by General Jackson, and the veto came in at the next session of Congress, on the ground that it was disturbing the usual mode of settlement. [Laughter.]

After I became a member of the Senate, I revived this claim of Maryland, under instructions from my State Legislature, and I introduced a general bill, providing for the liquidation of the interest due to the different States of the Union, which had made such advances in a body. It was objected to by a gentleman, then a Senator from Alabama, who preferred that each State should have its own claim rest on its own basis. He introduced another bill for the benefit of the State of Alabama, and it was passed through the Senate, and under that bill the State of Alabama was paid according to the old mode of computation. The Senate will remark, however, that this rule was always adopted in the allowance of interest. The Government of the United States never paid interest, except where the State had paid interest itself upon its advance, or had lost interest, and Alabama obtained her allowance of interest because the funds which she had applied to aid the General Government were taken from a bank which was her property, and she had thus been obliged to contract her line of discounts, and so lost interest. The State of Maryland obtained interest because she had liquidated the bonds which she had given to her creditors for the money she applied for the service of the Government during the war, by selling United States stock of which she was owner, thus transferring to the liquidation of this obligation an interest-bearing fund. The principle was that the United States would pay no interest, except where interest had actually been paid or lost by the State.

As the State of Maryland came within that category she was entitled to interest, and after long years of dispute on the subject, the Congress of the United States, at the last session, passed the Act which has been referred to, providing for the reexamination and readjustment of the account of the State of Maryland, and directing that the interest should be calculated according to certain rules laid down by the Supreme Court of the United States for that purpose; that is to say, first applying the payments to the interest, and when the interest was all liquidated then applying them to the principal; and under that Act I think the State of Maryland received, after the last session of Congress, about two hundred and seventy thousand dollars. There are several States interested in like manner; I do not recollect how many; but when I originally introduced the bill I carefully noticed the States interested and their number, and no doubt the amount will be very large. Delaware, South Carolina, Virginia, and several other States are interested, and the amount is very large; but I do not know that magnitude of the obligation is any defense against the passage of an Act for payment, according to the principles of equity which have been applied to the State of Maryland. This is an inconvenient time, it is true, for us to be dunned for this money; but I think we ought to settle fairly, if we do nothing else. If we cannot pay the money, we ought, at least, to acknowledge the obligation.

[Second session Thirty-fifth Congress.]

IN SENATE, FEBRUARY —, 1859.

The Army Bill being under consideration:

Mr. Iverson. I am instructed by the Committee on Claims to offer the following amendment:

That all the States which have had, or shall have refunded to them by the United States, moneys expended by such States for military purposes during or since the war of 1812 with Great Britain, which have not already been allowed interest upon the moneys so expended, shall now be allowed interest, so far as they have themselves paid or lost it, said interest to be computed by the proper accounting officers of the Treasury, according to the provisions and principles directed to be applied to the case of Maryland by the twelfth section of the Act of March 3, 1857, entitled "An Act making appropriations for certain civil expenses of the Government for the year ending the thirtieth of June, 1858," and that all the States which have been allowed interest upon claims against the United States, accruing during or since the said war of 1812, shall be entitled to have their interest accounts reexamined and restated by the proper accounting officers of the Treasury, according to the provisions and principles of the twelfth section of said Act of March 3, 1857, and that those provisions and principles shall govern the computation of interest in all cases in which interest may hereafter be allowed to any of the States. Any money found to be due to any State, as directed by this section to be computed and ascertained, shall be paid to such State out of any money in the Treasury not otherwise appropriated: *provided*, that, in lieu of the payment of money, the Secretary of the Treasury pay the State of Maryland on such sums only on which the said State either paid interest or lost interest by the transfer of an interest-bearing fund.

This provision was applied by that Act to the State of Maryland, and under the accounts of that State were reopened and readjusted at the Treasury Department, and she was paid back, if I remember aright, the sum of \$272,000. The amendment which I now propose, simply puts all the States precisely on the footing that the Act of 1857 put the State of Maryland. It is just and proper that the rule, if applied to one State, should be applied to all; and the rule is itself just and proper. Heretofore the mode of calculating interest at

the Treasury Department has been the one which was in vogue some half century or century ago, and which has long since been exploded in every civilized country. They calculated the interest upon the principal up to the time of the settlement, and they calculated interest upon the various payments up to the time of the settlement, and struck a balance. That mode of calculating interest has been exploded in every State in the Union. Not a single State now adheres to it, although it was, in early days, when I was a boy, the mode of calculating interest. The mode now is that applied to the accounts of the State of Maryland, first to compute interest up to the time of the first payment, and then apply the payment, in the first place, to the extinguishment of the interest, and then apply any surplus to the extinguishment of the principal, and so on of each payment of interest. That is the principle on which the accounts of Maryland have been settled, and I propose to apply it to all the States of the Union. It is just and proper.

The amendment, you will perceive, does not give the States interest unless they paid it themselves or lost it by the transfer of an interest-bearing fund. It is just and proper that every State should be put upon the same footing as the State of Maryland. And the principle of settlement proposed is just and proper in itself. It is the mode adopted by every State in the Union in the calculation of interest. I have put in the amendment a provision that the Secretary of the Treasury shall pay these amounts to the States in five per cent bonds of the United States, redeemable in ten years or sooner, at the discretion of the President. The States, I understand, are perfectly willing to take five per cent bonds of the United States instead of the money. In the present embarrassed condition of the country, we think it prudent and proper to make this provision. With this explanation of the case, I hope the Senate will adopt the amendment.

Mr. Hunter. At the last session I voted against the provision when it was introduced, but I believe the opinion of the State which I represent is, that she is entitled to the money; and although I would never have used my official position to introduce it, I feel bound to vote for it as her representative. I suppose, in justice, if we were settling the account originally, this would be the proper mode of doing it. I do not think it well to reopen these old accounts which have been settled, and with the settlement of which the States were satisfied in former times; but the precedent which has been set in the case of Maryland has made all the States desire the application of the same principle to them, and I believe most of them have agents here, and are insisting upon it.

\* \* \* \* \*

Mr. Iverson called for the ayes and nays, and they were ordered.

Mr. Fessenden. I wish to say a word about this proposition; because I think, when the Senate understands it, there will be no difficulty in passing it. I think there can be no dispute about it. I advocated this provision last year, against the opposition of the Chairman of the Committee on Finance; and I have no sort of disposition to change my action because it turns out that the State of West Virginia is so largely interested as she is. I do not mean to say that that affects his action, because everybody knows that he is not influenced in that way. I mean simply to say, in regard to myself, that Virginia has a large claim under this provision, much larger than it was supposed any State could have; but that does not affect my action, or induce me to change my vote. I have no doubt, from the honorable Senator's well known habit of looking out for the Treasury, that if Virginia would let him alone, he would vote against the amendment, although his State will be so much benefited by it.

But, sir, the principle of settlement proposed is a very simple one, and a perfectly honest one. In settling these claims the Government officers have heretofore acted on the principle of applying partial payments to the discharge of the principal, and letting the interest accumulate. It is no question about paying interest; that is settled. *This class of claims always carry interest, and it is always allowed.* The Government let the interest run on until it got to be as large as the principal. They then paid a certain amount; but instead of applying that amount to the interest which was due, they applied it to the principal and let the interest stand, which did not carry interest; that is to say, they paid the principal before the interest. They did worse than that in many cases, as I understand; when they came to settle up fairly they charged interest on the payment of the principal up to the time of the settlement, and allowed no interest on the interest existing. Thus they made the payment of the principal eat up the interest.

This mode of settlement was grossly unjust, and as great an outrage as anything could be. It was contrary to the mode in which interest is computed between individual and individual. Maryland applied for a recomputation, and Congress passed a law to allow it. All that is now asked is to place every other State on the same footing—there may be some half dozen of them—that advanced money on the same foundation on which you placed Maryland, not only to do the thing equally as between the States, but to do the just thing, and pay money which is absolutely due without any sort of question.

The following thirty-four Senators voted *in favor* of the amendment, viz., twenty-six in 1858, and eight others in 1859: Bayard, Benjamin, Bigler, Bright, Brown, Chestnut, Clark, Collamer, Crittenden, Dixon, Doolittle, Durkee, Fessenden, Fitch, Foot, Foster, Hamlin, Hammond, Harlan, Hunter, Iverson, Kennedy, Mallory, Mason, Pearce, Polk, Rice, Seward, Simmons, Thomson, Toombs, Wade, Wilson, Yulee—34.

The amendment prevailed in the Senate, but failed in the House of Representatives in a close vote, when avowed friends, enough to have carried it, voted in the negative, because of the then condition of the Treasury.

Forty-ninth Congress, first session. House of Representatives. Report No. 3126.

# FIRST NATIONAL BANK OF NEWTON, MASSACHUSETTS.

June 30, 1886—Committed to the Committee of the Whole House, and ordered to be printed.

Mr. Gallinger, from the Committee on Claims, submitted the following

## REPORT.

[To accompany bill H. R. 1125.]

The Committee on Claims, to whom was referred the bill (H. R. 1125) for the relief of the First National Bank of Newton, Massachusetts, having considered the same, respectfully report:

That this bill was favorably reported by the Committee on Claims of the Senate in the Forty-eighth Congress, and after an exhaustive discussion passed that body. It has again been favorably reported by the Committee on Claims of the Senate, the report being made by Senator Jackson, which we adopt, as follows:

That on and prior to February 28, 1867, Julius F. Hartwell was Cashier of the United States Sub-Treasury in Boston, Massachusetts. While acting as such Cashier he embezzled a large amount of the Government's money by lending the same to the firm of Mellon, Ward & Co., who were extensively engaged in stock speculations. As the time for the examination of the funds in the Sub-Treasury approached, March 1, 1867, when Hartwell's accounts would have to be passed, some plan had to be devised by the guilty parties to prevent or delay exposure. The device resorted to and put in operation was to procure funds and assets of innocent third parties to be placed temporarily on deposit in the Sub-Treasury till the examination was had, and then to be immediately withdrawn again, and thus tide Hartwell and his associates in the embezzlement over the crisis. Edward Carter, the active financial member of said firm of Mellon, Ward & Co., who concocted this scheme with Hartwell, was a Director in the First National Bank of Newton, and seems to have possessed not only the confidence of, but unlimited influence over, E. Porter Dyer, the Cashier of said bank. By means of this confidence and influence, and in execution of his and Hartwell's fraudulent conspiracy, Carter procured from Dyer the money, bonds, securities, and checks of the First National Bank of Newton, to the amount of \$371,025, which were deposited in the Sub-Treasury on February 28, 1867, Hartwell giving a receipt therefor, as Cashier, that the deposit was "to be returned on demand in Governments, or bills, or its equivalent." This receipt, being in the name of Mellon, Ward & Co., was immediately indorsed by Carter, as follows: "Pay only to the order of E. Porter Dyer, Jr., Cashier," and signed Mellon, Ward & Co.

This deposit of its funds and assets was made without the knowledge and consent of the President and Directors of the First National Bank of Newton. Hartwell's default was discovered on the night of February 28, and on March 1, 1867, when Dyer presented the above receipt and demanded its redemption, payment was refused, and the bank's funds and securities were held and applied by the Government to make good Hartwell's default. The capital stock of the bank was \$150,000. It was doing and for years had done a prosperous and profitable business; but this fraudulent misapplication and appropriation of its assets ruined the institution, and on March 11, 1867, it was placed in the hands of a receiver, and to make good its losses and provide the means to discharge its debts the stockholders were compelled to pay in a second time the amount of their respective holdings of its capital stock. On February 24, 1873, the First National Bank of Newton filed its petition in the Court of Claims against the United States to recover the amount of its funds and assets so deposited in the Sub-Treasury and appropriated by the Government. The case was heard in December, 1880, and judgment was rendered in favor of the bank January 24, 1881, for the full amount of the principal claimed, viz., \$371,025. The full details of the conspiracy and transaction by which the Government, through the fraud of its agent, wrongfully got possession of the bank's assets, are clearly set forth in 10 Court of Claims Reports, p. 519; 96 United States Supreme Court Reports, 30; and 16 Court of Claims Reports, p. 54, to which reference is here made for a more complete statement of the facts than hereinabove stated. In delivering the opinion of the Court of Claims in the bank's suit, Chief Justice Drake characterized the taking of its assets as a "villainous scheme," and the transaction as "simply a case of a bank being robbed, and of its stolen assets being put into the hands of the Cashier of the Sub-Treasury for a purpose which by no possible view could in law be held to effect a transfer of the bank's right of property in them either to him or to the United States." That the United States could not derive a benefit from the fraudulent act of their Cashier, or lawfully withhold the funds thus

obtained, admitted of no question, either in law or morals. After referring to many of the authorities on the question, the Supreme Court (96 United States Reports, p. 36) say, in conclusion:

"But surely it ought to require neither argument nor authority to support the proposition that where the money or property of an innocent person has gone into the coffers of the nation by means of a fraud to which its agent was a party, such money or property cannot be held by the United States against the claim of the wronged and injured party. The agent was agent for no such purpose. His doings were vitiated by the underlying dishonesty, and could confer no rights upon his principal."

On the twenty-eighth of April, 1881, a duly certified copy of the bank's judgment against the United States was presented to the Secretary of the Treasury, as provided by law. Before its payment, the now Attorney-General of the United States, in March, 1881, entered an appeal to the Supreme Court. This appeal seems to have been taken for the purpose of enabling him to examine the case. After making such examination, and finding the case undistinguishable from that reported in 96 United States Reports, above cited, the appeal, which had been in the meantime entered in the Supreme Court, was, on his motion, dismissed in that Court October 25, 1881.

Thereafter, on October 29, 1881, the sum of \$260,000 was paid on account of this judgment, by the Treasurer of the United States, that being the only amount available under the appropriation then existing. The balance of \$111,025 was paid August 30, 1882.

Such is a brief history of the case. The bill under consideration proposes to pay the bank interest on the amount of its funds so taken and appropriated by the United States, from date of conversion to time of payment. The Court of Claims was not authorized to award such interest, its jurisdiction in the matter of "interest" being confined to cases of contract expressly stipulating for the payment of interest. It will hardly be insisted that this restriction upon one of its tribunals settles either the question of the Government's liability or the measure of its duty in a case like the present, where the contract relation is not voluntarily assumed by the party making the claim. The Government may, with propriety, refuse to recognize any obligation to pay interest to those who voluntarily deal with it, without expressly stipulating for the payment of interest. But the question of its obligation to make indemnity by the allowance of interest, where the creditor relation is forced upon the individual by the wrongful act of the Government or its agents, stands upon a different footing, and should be determined by the general principles of the public law and the rules of natural justice and equity applicable to the facts and circumstances of the particular case. Ordinarily the Government cannot and should not be made responsible to the extent of individuals for the wrongful acts of its officers or agents. But this rule cannot be justly invoked to shield or protect the Government from the measure of responsibility applied to private persons where it has adopted such wrongful acts and derived an advantage and benefit therefrom. Where the Government has profited by the fraud of its agent, why should it deny to the injured party the full redress that Courts of equity would afford as between individuals and private corporations? In the jurisprudence of all civilized countries the general doctrine is well settled that any one—except a "bona fide" purchaser for value and without notice—who obtains possession of property which has been procured from the owner by fraudulent means or practices is converted by the Courts into a trustee, and ordered to account as such; or, as stated by Perry on Trusts, Section 166, the principle "denotes that the parties defrauded, or beneficially entitled, have the same right and remedies against him as they would be entitled to against an express trustee who had fraudulently committed a breach of trust." Whenever the principal adopts the fraudulent act of his agent, or attempts to reap an advantage therefrom, his liability is properly measured by this rule. Indeed (says Perry on Trusts, 172), the doctrine has been thus broadly stated:

"That when once a fraud has been committed, not only is the person who committed the fraud precluded from deriving any benefit from it, but every innocent person is so likewise, unless he has innocently acquired a subsequent interest; for a third person by seeking to derive any benefit under such a transaction, or to retain any benefit resulting therefrom, becomes *particeps criminis*, however innocent of the fraud in the beginning."

It would not admit of a moment's doubt that in the present case interest would have been awarded the bank as against the agent committing the fraud. It is also clear that as against any private principal occupying the position of the Government the bank could and would have received interest. Why should not the Government, standing as it does under this transaction in the attitude of a trustee, if not a *particeps criminis*, be held to the same measure of responsibility and redress? Nothing short of this will meet the justice of the case or afford the equitable relief to which the bank is justly entitled. A great Government like ours, with unlimited resources and revenues at its command, should above all things deal justly with its citizens. It should not stand upon technicalities in withholding property or funds which may have wrongfully come into its possession. It should never make for itself a profit or secure and retain an advantage through the fraud of its agents or by any breach of trust which has worked a wrong and injury. It should in such cases make such reparation as its Courts would enforce as between individuals.

The American Consul at Geneva successfully claimed interest upon the amounts awarded to the United States against Great Britain. The counsel for Great Britain, while objecting to the application of the principle allowing interest, distinguished between cases where, in their view, it should and should not be allowed, in language strikingly applicable here; and attention is called to it as being a concession, on the part of a party objecting to the allowance of interest, which covers the present case, as follows:

"Interest, in the proper sense of that word, can only be allowed where there is a principal debt of liquidated and ascertained amount detained and withheld by the debtor from the creditor after the time when it was absolutely due and ought to have been paid, the fault of the delay in payment resting with the debtor; or where the debtor has wrongfully taken possession of and exercised dominion over the property of the creditor. In the former case, from the time when the debt ought to have been paid, the debtor has had the use of the creditor's money, and may justly be presumed to have employed it for his own profit and advantage. He has thus made a gain corresponding with the loss which the creditor has sustained by being deprived, during the same period of time, of the use of his money; and it is evidently just that he should account to the creditor for the interest which the law takes as the measure of this reciprocal gain and loss. In the latter case the principle is exactly the same. It is ordinarily to be presumed that the person who has wrongfully taken possession of the property of another has enjoyed the fruits of it; and if, instead of this, he has destroyed it or kept it unproductive, it is still just to hold him responsible for interest on its value, because his own acts, after the time when he assumed control over it, are the causes why it has remained unfruitful. In all these cases it is the *actual or virtual possession of the money or property belonging to another* which is the foundation of the liability of interest. The person liable is either *lucratus* by the detention of what is not his own, or is justly accountable as if he were so."

In the case under consideration, the funds of the bank—an amount fixed and liquidated—have been wrongfully withheld for many years, during which the Government has retained and used them, and to that extent has made or saved interest, of which the bank throughout the same period lost such interest. In allowing interest at a low rate the bank will receive only (or less than) what it was unjustly deprived of, while the United States will only yield up what it has received or saved that rightfully belonged to the bank, for it cannot be questioned that the use of the principal sum has put the Government in receipt of additional funds to the amount of the value of such use. The claim is thus brought within the general principle so clearly and forcibly stated in the above quoted extract from the counsel of Great Britain.

In this statement of the proposition which should govern the present case it is hardly necessary to say that the committee do not wish to be understood as even suggesting that the same rule could or should be applied to that large class of cases known as war claims. They stand entirely upon a different footing. Every man, woman, and child residing, during the war, in the insurrectionary territory, became thereby an enemy of the United States. The Government could have asserted against each and all of them the extremest measures conceded by the public law to belligerents. That it did not adopt this policy, but modified the harsher rules of war, by which it waived some of its belligerent rights, could not be made in any case the basis of a claim for interest, nor lay the ground for the payment of interest. Take, for illustration, the captured and abandoned property cases. This property and its proceeds, under the modern rules of war, could have been appropriated to the absolute use of the Government. Instead of pursuing this course, the Government, in a spirit of liberality, adopted the generous policy of making itself a depository of these funds, to be held for the benefit of the real owners. The proposition to allow interest on such claims should not and would not be entertained for a moment.

It cannot be properly urged as an objection to this claim for interest that the bank should be held responsible to some extent for the unfaithfulness of the Cashier whom it had selected and intrusted with certain well defined duties in respect to its funds and assets. No want of care is shown in making the selection. There was nothing in his previous conduct to excite suspicion or put the bank upon inquiry or notice so as to charge it with any degree of negligence in retaining him in its employ. The doctrine of contributory negligence is sometimes looked to and considered in the determination of the better equity as between two innocent parties who have been defrauded by a *third party who has been trusted by both*. If there had been no previous default on the part of Hartwell, and he had on the night of February 28, 1867, embezzled the funds and assets of the bank that day deposited with him by Carter and Dyer, the Government and the bank might then have occupied the position of two innocent parties, whose equities would have to be determined and settled to some extent by the question of negligence in the employment of unfaithful agents. But that is not the present case. The Government had already lost its money by the previous embezzlement of its Cashier of the Sub-Treasury, and then, through the corrupt influence of that same agent and his confederate, the bank's agent is tempted by a "villainous scheme" into a breach of his trust, by means of which the Government obtains possession of the bank's entire assets, and wrongfully appropriates them in making good its previous losses. It would be shocking to every sense of right and justice for the Government now to urge that the unfaithfulness of the bank's trusted agent was a bar or valid defense to its liability and duty to refund either the principal or interest of the funds so procured and converted to its own use. Your committee have too much regard for the honor and good name of the Government to allow it to occupy a position so questionable. It should be observed, too, that the decision of its own Courts declaring that the Government could not rightfully hold the assets so fraudulently obtained has really disposed of this question of negligence, which applied with equal force to the recovery of the principal as to the interest.

To the objection that the allowance of this claim for interest will establish a bad precedent, the reply of Mr. Sumner to a similar objection is a complete answer:

"If the claim is just, the precedent of paying it is one which our Government should

wish to establish. Honesty and justice are not precedents of which either Government or individuals should be afraid." (Senate Report No. 4, Forty-first Congress, first session, p. 10.)

But it is respectfully submitted that there are abundant precedents, both in the judicial and in the legislative branches of the Government, to support the present application for the allowance of interest. The prevalent idea that "the Government never pays interest" has grown up from the *practice of the departments*, which do not allow interest except where it is specially provided for in cases of contracts or expressly authorized by law. But this usage and custom of the Executive Departments cannot be properly regarded as the settled rule and policy of the Government, for its action upon the subject of interest has not from the earliest time conformed to such usage. On the contrary, it will be found, upon an examination of the precedents where Congress has passed Acts for the relief of private citizens, that in almost every case, except those growing out of the late war, Congress has directed the payment of interest where the United States had withheld a sum of money which had been decided by competent authority to be due, or where the amount due was ascertained, fixed, and certain. The highest Court of the country has also affirmed this to be not only the practice of the Government, but the measure of its duty. Thus, in 15 Wallace, p. 77, where the suit was against a United States Collector for the recovery of taxes illegally collected, the Supreme Court used the following language upon the subject of interest allowed on the claim, viz.:

"The third exception is to the instruction that if the jury found for plaintiff they might add interest. This was not contested upon the argument, and we think it clearly correct. The ground for the refusal to allow interest is the presumption that the Government is always ready and willing to pay its ordinary debts. When an illegal tax has been collected, the citizen who has paid it and has been obliged to bring suit against the Collector, is entitled to interest in the event of recovery from the time of the alleged exaction."

On June 8, 1872, Congress referred the claim of the heirs of Francis Vigo to the Court of Claims in the following language:

"The claim of the heirs and legal representatives of Colonel Francis Vigo, deceased, late of Terre Haute, Ind., for money and supplies furnished the troops under command of General George Rogers Clark, in the year 1778, during the Revolutionary war, be and the same hereby is referred, along with all the papers and official documents belonging thereto, to the Court of Claims, with full jurisdiction to adjust and settle the same; and in making such adjustment and settlement, the said Court shall be governed by the rules and regulations heretofore adopted by the United States in the settlement of like cases, giving proper consideration to official acts, if any have heretofore been had in connection with this claim, without regard to the statute of limitation."

The Court of Claims allowed the claim, with interest thereon from the time it accrued, and among other facts found that:

"No rules and regulations have heretofore been adopted by the United States in the settlement of like cases, except such as may be inferred from the policy of Congress when passing private Acts for the relief of various persons. When passing such private Acts, Congress has allowed interest upon the claim up to the time that the relief was granted."

The Attorney-General appealed from this judgment awarding interest, but the decision of the Court below was affirmed by the Supreme Court, at the October term, 1875. (See 91 U. S. Rep., p. 443, *et seq.*) In delivering the opinion of the Supreme Court, Mr. Justice Miller says:

"It has been the general rule of the officers of the Government, in adjusting and allowing *unliquidated and disputed* claims against the United States, to refuse to give interest. That this rule is sometimes at variance with that which governs the acts of private citizens in a Court of justice, would not authorize us to depart from it in this case. The rule, however, is not uniform; and especially is it not so in regard to claims allowed by special Acts of Congress, or referred by such Acts to some department or officer for settlement."

This was said in reference to unliquidated and unadjusted claims. Where the Government, by and through the fraud of its agents, gets possession and withholds from the rightful owner an ascertained, fixed, and certain amount, the claim for interest certainly stands upon higher equitable grounds than in the cases cited. The finding by the Court of Claims that the policy of the Government, as shown by the general rule pursued by Congress in passing Acts for the relief of private claims, was to allow interest, is supported by the precedents.

Your committee, upon this proposition, beg leave to refer to and adopt this portion of House Report 391, Forty-third Congress, first session, which discusses the subject of interest as follows:

#### THE OBLIGATION TO PAY INTEREST ON THE AMOUNT AWARDED THE CHOCTAW NATION.

Your committee have given this question a most careful examination, and are obliged to admit and declare that the United States can not in equity and justice, nor without national dishonor, refuse to pay interest upon the moneys so long withheld from the Choctaw Nation. Some of the reasons which force us to this conclusion are as follows:

1. The United States acquired the lands of the Choctaw Nation on account of which the said award was made, on the twenty-seventh day of September, 1830, and it has held them for the benefit of its citizens ever since.

2. The United States had in its Treasury, many years prior to the first day of January



1869, the proceeds resulting from the sale of the said lands, and have enjoyed the use of such moneys from that time until now.

3. The award in favor of the Choctaw Nation was an award under a treaty, and made by a tribunal whose adjudication was final and conclusive. (*Comegys vs. Vasse*, 1 Pet., 193.)

4. The obligations of the United States under its treaties with Indian nations have been declared to be equally sacred with those made by treaties with foreign nations. (*Worcester vs. The State of Georgia*, 6 Pet., 582.) And such treaties, Mr. Justice Miller declares, are to be construed liberally. (*The Kansas Indians*, 5 Wall., 737-760.)

5. The engagements and obligations of a treaty are to be interpreted in accordance with the principles of the public law, and not in accordance with any municipal code or executive regulation. No statement of this proposition can equal the clearness or force with which Mr. Webster declares it in his opinion on the Florida claims attached to the report in the case of Letitia Humphreys. (Senate report No. 93, first session Thirty-sixth Congress, p. 16.) Speaking of the obligation of a treaty, he said:

"A treaty is the supreme law of the land. It can neither be limited nor restrained, nor modified, nor altered. It stands on the ground of national contract, and is declared by the Constitution to be the supreme law of the land; and this gives it a character higher than any act of ordinary legislation. It enjoys an immunity from the operation and effect of all such legislation.

"A second general proposition, equally certain and well established, is that the terms and the language used in a treaty are always to be interpreted according to the law of nations, and not according to any municipal code. This rule is of universal application. When two nations speak to each other they use the language of nations. Their intercourse is regulated, and their mutual agreements and obligations are to be interpreted by that code only which we usually denominate the public law of the world. This public law is not one thing at Rome, another at London, and a third at Washington. It is the same in all civilized States; everywhere speaking with the same voice and the same authority."

Again, in the same opinion, Mr. Webster used the following language:

"We are construing a treaty, a solemn compact between nations. This compact between nations, this treaty, is to be construed and interpreted throughout its whole length and breadth, in its general provisions, and in all its details, in every phrase, sentence, word, and syllable in it, by the settled rules of the law of nations. No municipal code can touch it, no local municipal law affect it, no practice of administrative department come near it. Over all its terms, over all its doubts, over all its ambiguities, if it had any, the law of nations 'sits arbitress.'"

6. By the principles of the public law interest is always allowed as indemnity for the delay of payment of an ascertained and fixed demand. There is no conflict of authority upon this question among the writers on public law.

This rule is laid down by Rutherford in these terms:

"In estimating the damages which any one has sustained, when such things as he has a perfect right to are unjustly taken from him, or *withholden*, or intercepted, we are to consider not only the value of the thing itself but the value likewise of the fruits or profits that might have arisen from it. He who is the owner of the thing is likewise the owner of the fruits or profits. So that it is as properly a damage to be deprived of them as it is to be deprived of the thing itself." (Rutherford's Institutes, Book I, chap. 17, sec. 5.)

In laying down the rule for the satisfaction of injuries in the case of reprisals, in making which the strictest caution is enjoined not to transcend the clearest rules of justice, Mr. Wheaton, in his work on the law of nations, says:

"If a nation has taken possession of that which belongs to another, *if it refuses to pay a debt*, to repair an injury, or to give adequate satisfaction for it, the latter may seize something of the former and apply it to his or its advantage, till it obtains payment of what is due, together with *interest and damages*." (Wheaton on International Law, p. 341.)

A great writer, Domat, thus states the law of reason and justice on this point:

"It is a natural consequence of the general engagement to do wrong to no one that they who cause any damage by failing in the performance of that engagement are obliged to repair the damage which they have done. Of what nature soever the damage may be, and from what cause soever it may proceed, he who is answerable for it ought to repair it by an *amende* proportionable either to his fault or to his offense or other cause on his part, and to the loss which has happened thereby." (Domat, Part I, Book III, Tit. V, 1900, 1903.)

"Interest" is, in reality, in justice, in reason, and in law, too, a part of the debt due. It includes, in Pothier's words, the loss which one has suffered, and the gain which he has failed to make. The Roman law defines it as "*quantum mea interfuit; id est, quantum mihi abest, quantumque lucrari potui*." The two elements of it were termed "*lucrum cessans et damnum emergens*." The payment of both is necessary to a complete indemnity.

Interest, Domat says, is the reparation or satisfaction which he who owes a sum of money is bound to make to his creditor for the damage which he does him by not paying him the money he owes him.

It is because of the universal recognition of the justice of paying, for the retention of moneys indisputably due and payable immediately, a rate of interest considered to be a fair equivalent for the loss of its use, that judgments for money everywhere bear interest. The creditor is deprived of his profit, and the debtor has it. What greater wrong could the law permit than that the debtor should be at liberty indefinitely to delay payment,

and during the delay have the use of the creditor's moneys for nothing? They are none the less the creditor's moneys because the debtor wrongfully withholds them. *He holds them, in reality and essentially, in trust; and a trustee is always bound to pay interest upon moneys so held.*

In closing these citations from the public law, the language of Chancellor Kent seems eminently appropriate. He says: "In cases where the principal jurists agree, the presumption will be very great in favor of the solidity of their maxims, and no civilized nation that does not arrogantly set all ordinary law and justice at defiance will venture to disregard the uniform sense of established writers on international law."

7. The practice of the United States in discharging obligations resulting from treaty stipulations has always been in accord with these well established principles. It has exacted the payment of *interest* from other nations in all cases where the obligation to make payment resulted from treaty stipulations, and it has acknowledged that obligation in all cases where a like liability was imposed upon it.

The most important and leading cases which have occurred are those which arose between this country and Great Britain; the first under the treaty of 1794, and the other under the first article of the treaty of Ghent. In the latter case the United States, under the first article of the treaty, claimed compensation for slaves and other property taken away from the country by the British forces at the close of the war in 1815. A difference arose between the two Governments, which was submitted to the arbitrament of the Emperor of Russia, who decided that "the United States of America are entitled to a just indemnification from Great Britain for all private property carried away by the British forces." A joint commission was appointed for the purpose of hearing the claims of individuals under this decision. At an early stage of the proceedings the question arose as to whether *interest* was a part of that "*just indemnification*" which the decision of the Emperor of Russia contemplated. The British Commissioner denied the obligation to pay interest. The American Commissioner, Langdon Cheves, insisted upon its allowance, and in the course of his argument upon this question said:

"Indemnification means a reimbursement of a loss sustained. If the property taken away on the seventeenth of February, 1815, were returned now uninjured, it would not reimburse the loss sustained by the taking away and consequent detention; it would not be an indemnification. The claimant would still be uncompensated for the loss of the use of his property for ten years, which, considered as money, is nearly equivalent to the original value of the principal thing."

Again he says:

"If interest be an incident usually attendant on the delay of payment of debts, damages are equally an incident attendant on the withholding an article of property."

"In consequence of this disagreement the commission was broken up; but the claims were subsequently compromised by the payment of \$1,204,960, instead of \$1,250,000, as claimed by Mr. Cheves; and of the sum paid by Great Britain, \$418,000 was expressly for interest.

An earlier case, in which this principle of interest was involved, arose under the treaty of 1794, between the United States and Great Britain, in which there was a stipulation on the part of the British Government in relation to certain losses and damages sustained by American merchants and other citizens, by reason of the illegal or irregular capture of their vessels, or other property, by British cruisers; and the seventh article provided in substance that "full and complete compensation for the same will be made by the British Government to the said claimants."

A joint commission was instituted under this treaty, which sat in London, and by which these claims were adjudicated. Mr. Pinckney and Mr. Gore were Commissioners on the part of the United States, and Dr. Nicholl and Dr. Swabey on the part of Great Britain; and it is believed that in all instances this Commission allowed interest as a part of the damage. In the case of "*The Betsey*," one of the cases which came before the Board, Dr. Nicholl stated the rule of compensation as follows:

"To reimburse the claimants the original cost of their property, and all the expenses they have actually incurred, together with interest on the whole amount, would, I think, be a just and adequate compensation. This, I believe, is the measure of compensation usually made by all the belligerent nations, and accepted by all neutral nations, for losses, costs, and damages occasioned by illegal captures." (Vide Wheaton's Life of Pinckney, page 198; also, 265, note, and page 371.)

By a reference to the American State Papers, Foreign Relations, vol. 2, pages 119, 120, it will be seen by a report of the Secretary of State, of the sixteenth February, 1798, laid before the House of Representatives, that interest was awarded and paid on such of these claims as had been submitted to the award of Sir William Scott and Sir John Nicholl, as it was in all cases by the Board of Commissioners. In consequence of some difference of opinion between the members of this Commission, their proceedings were suspended until 1802, when a convention was concluded between the two Governments, and the Commission reassembled, and then a question arose as to the allowance of interest on the claims during the suspension. This the American Commissioners claimed; and though it was at first resisted by the British Commissioners, yet it was finally yielded, and interest was allowed and paid. (See Mr. King's three letters to the Secretary of State, of twenty-fifth of March, 1803, twenty-third of April, 1803, and thirtieth of April, 1803, American State Papers, Foreign Relations, vol. 2, pages 387 and 388.)

Another case in which this principle was involved arose under the treaty of the twenty-seventh of October, 1795, with Spain, by the twenty-first article of which, "in order to ter-

minate all differences, on account of the losses sustained by citizens of the United States in consequence of their vessels and cargoes having been taken by the subjects of his Catholic Majesty during the late war between Spain and France, it is agreed that all such cases shall be referred to the final decision of Commissioners, to be appointed in the following manner," etc. The Commissioners were to be chosen, one by the United States, one by Spain, and the two were to choose a third; and the award of the Commissioners, or any two of them, was to be final, and the Spanish Government to pay the amount in specie.

This Commission awarded interest as part of the damages. (See American State Papers, vol. 2, Foreign Relations, page 283.) So in the case of claims of American citizens against Brazil, settled by Mr. Tudor, United States Minister, interest was claimed and allowed. (See Ex. Doc., first session Twenty-fifth Congress, House Repts., Doc. 32, page 249.)

Again, in the convention with Mexico, of the eleventh of April, 1839, by which provision was made by Mexico for the payment of claims of American citizens for injuries to persons and property by the Mexican authorities, a mixed Commission was provided for, and this Commission allowed interest in all cases. (House Ex. Doc. 291, Twenty-seventh Congress, second session.)

So, also, under the treaty with Mexico of February 2, 1848, the Board of Commissioners for the adjustment of claims under that treaty allowed interest in all cases, from the origin of the claim until the day when the Commission expired.

So, also, under the convention with Colombia, concluded February 10, 1864, the Commission for the adjudication of claims under that treaty allowed interest in all cases as a part of the indemnity.

So under the recent convention with Venezuela, the United States exacted interest upon the awards of the Commission, from the date of the adjournment of the Commission until the payment of the awards.

The mixed American and Mexican Commission, now in session here, allows interest in all cases from the origin of the claim, and the awards are payable with interest.

Other cases might be shown in which the United States, or their authorized diplomatic agents, have claimed interest in such cases, or where it has been paid in whole or in part. (See Mr. Russell's letter to the Count de Engstein, of October 5, 1818, American State Papers, vol. 4, p. 639, and proceedings under the convention with the Two Sicilies, of October, 1835, Elliott's Dip. Code, p. 625.)

It can hardly be necessary to pursue these precedents further. They sufficiently and clearly show the practice of this Government with foreign nations, or with claimants under treaties.

8. The practice of the United States in its dealings with the various Indian tribes or nations has been in harmony with these principles.

In all cases where money belonging to Indian nations has been retained by the United States, it has been so invested as to produce interest, for the benefit of the nation to which it belongs; and such interest is annually paid to the nation who may be entitled to receive it.

9. The United States, in adjusting the claim of the Cherokee Nation for a balance due as purchase money upon lands ceded by that nation to the United States in 1858, allowed interest upon the balance due them, being \$189,422 76, until the same was paid.

The question was submitted to the Senate of the United States, as to whether interest should be allowed them. The Senate Committee on Indian Affairs, in their report upon this subject, used the following language:

"By the treaty of August, 1846, it was referred to the Senate to decide, and that decision to be final, whether the Cherokees shall receive interest on the sums found due them from a misapplication of their funds to purposes with which they were not chargeable, and on account of which improper charges the money has been withheld from them. It has been the uniform practice of this Government to pay and demand interest in all transactions with foreign Governments, which the Indian tribes have always been said to be, both by the Supreme Court and all other branches of our Government, in all matters of treaty or contract. The Indians, relying upon the prompt payment of their dues, have in many cases contracted debts upon the faith of it, upon which they have paid, or are liable to pay, interest. If, therefore, they do not now receive interest on their money, so long withheld from them, they will in effect have received nothing." (Senate Report, No. 176, first session Thirty-first Congress, p. 78.)

10. That upon an examination of the precedents, where Congress has passed Acts for the relief of private citizens, it will be found that, in almost every case, Congress has directed the payment of interest, where the United States had withheld a sum of money which had been decided by competent authority to be due, or where the amount due was ascertained, fixed, and certain.

The following precedents illustrate and enforce the correctness of this assertion, and sustain this proposition:

1. An Act approved January 14, 1793, provided that lawful interest from the sixteenth of May, 1776, shall be allowed on the sum of \$200, ordered to be paid to Return J. Meigs, and the legal representatives of Christopher Greene, deceased, by a resolve of the United States, in Congress assembled, on the twenty-eighth of September, 1785. (6 Stats. at Large, p. 11.)

2. An Act approved May 31, 1794, providing for a settlement with Arthur St. Clair, for expenses while going from New York to Fort Pitt, and till his return, and for services in

the business of Indian treaties, and "allowed interest on the balance found to be due him." (6 Stats. at Large, p. 46.)

3. An Act approved February 27, 1795, authorized the officers of the Treasury to issue and deliver to Angus McLean, or his duly authorized attorney, certificates for the amount of \$254 43, bearing interest at six per cent, from the first of July, 1783, being for his services in the Corps of Sappers and Miners during the late war. (6 Stats. at Large, p. 20.)

4. An Act approved January 23, 1798, directing the Secretary of the Treasury to pay General Kosciusko an interest at the rate of six per cent per annum on the sum of \$12,280 54, the amount of a certificate due to him from the United States from the first of January, 1793, to the thirty-first of December, 1797. (6 Stats. at Large, p. 32.)

5. An Act approved May 3, 1802, provided that there be paid Fulwar Skipwith the sum of \$4,550, advanced by him for the use of the United States, with interest at the rate of six per cent per annum from the first of November, 1795, at which time the advance was made. (6 Stats. at Large, p. 48.)

6. An Act for the relief of John Coles, approved January 14, 1804, authorized the proper accounting officers of the Treasury to liquidate the claim of John Coles, owner of the ship Grand Turk, heretofore employed in the service of the United States, for the detention of said ship at Gibraltar from the tenth of May to the fourth of July, 1801, inclusive, and that he be allowed demurrage at the rate stipulated in the charter-party, together with the interest thereon. (6 Stats. at Large, p. 50.)

7. An Act approved March 3, 1807, provided for a settlement of the accounts of Oliver Pollock, formerly commercial agent for the United States at New Orleans, allowing him certain sums and commissions, with interest until paid. (6 Stats. at Large, p. 65.)

8. An Act for the relief of Stephen Sayre, approved March 3, 1807, provided that the accounting officers of the Treasury be authorized to settle the accounts of Stephen Sayre, as Secretary of Legation at the Court of Berlin, in the year 1777, with interest on the whole sum until paid. (6 Stats. at Large, p. 65.)

9. An Act approved April 25, 1810, directed the accounting officers of the Treasury to settle the account of Moses Young, as Secretary of Legation to Holland in 1780, and providing that after the deduction of certain moneys paid him, the balance, with interest thereon, should be paid. (6 Stats. at Large, p. 89.)

10. An Act approved May 1, 1810, for the relief of P. C. L'Enfant, directed the Secretary of the Treasury to pay to him the sum of \$666, with legal interest thereon from March 1, 1792, as a compensation for his services in laying out the plan of the city of Washington. (6 Stat. at L., p. 92.)

11. An Act approved January 10, 1812, provided that there be paid to John Burnham, the sum of \$125 72, and the interest on the same since the thirtieth of May, 1796, which, in addition to the sum allowed him by the Act of that date, is to be considered a reimbursement of the money advanced by him for his ransom from captivity in Algiers. (6 Stat. at L., p. 101.)

12. An Act approved July 1, 1812, for the relief of Anna Young, required the War Department to settle the account of Col. John Durkee, deceased, and to allow said Anna Young, his sole heiress and representative, said seven years' half-pay, and interest thereon. (6 Stat. at L., p. 110.)

13. An Act approved February 25, 1813, provided that there be paid to John Dixon the sum of \$329 84, with six per cent per annum interest thereon from the first of January, 1785, "being the amount of a final-settlement certificate, No. 596, issued by Andrew Dunscomb, late Commissioner of Accounts for the State of Virginia, on the twenty-second of December, 1786, to Lucy Dixon, who transferred the same to John Dixon." (6 Stat. at L., p. 117.)

14. An Act approved February 25, 1813, required the accounting officers of the Treasury to settle the account of John Murray, representative of Dr. Henry Murray, and that he be allowed the amount of three loan-certificates for \$1,000, with interest from the twenty-ninth of March, 1782, issued in the name of said Murray, signed Francis Hopkinson, Treasurer of Loans. (6 Stat. at L., p. 117.)

15. An Act approved March 3, 1813, directed the accounting officers of the Treasury to settle the accounts of Samuel Lapsley, deceased, and that they be allowed the amount of two final-settlement certificates, No. 78446, for one thousand dollars, and No. 78447, for one thousand three hundred dollars, and interest from the twenty-second day of March, 1783, issued in the name of Samuel Lapsley, by the Commissioner of Army Accounts for the United States on the first day of July, 1784. (6 Stat. at L., p. 119.)

16. An Act approved April 13, 1814, directed the officers of the Treasury to settle the account of Joseph Brevard, and that he be allowed the amount of a final-settlement certificate for \$183 23, dated February 1, 1785, and bearing interest from the first of January, 1783, issued to said Brevard by John Pierce, Commissioner for Settling Army Accounts. (6 Stat. at L., p. 134.)

17. An Act approved April 18, 1814, directed the Receiver of Public Moneys at Cincinnati to pay the full amount of moneys, with interest, paid by Dennis Clark, in discharge of the purchase money for a certain fractional section of land purchased by said Clark. (6 Stat. at L., p. 141.)

18. An Act for the relief of William Arnold, approved February 2, 1815, allowed interest on the sum of six hundred dollars due him from January 1, 1783. (6 Stat. at L., p. 146.)

19. An Act approved April 26, 1816, directing the accounting officers of the Treasury to pay to Joseph Wheaton the sum of eight hundred and thirty-six dollars and forty-two



cents, on account of interest due him from the United States upon sixteen hundred dollars and eighty-four cents, from April 1, 1807, to December 21, 1815, pursuant to the award of George Youngs and Elias B. Caldwell, in a controversy between the United States and the said Joseph Wheaton. (6 Stat. at L., 166.)

20. An Act approved April 26, 1816, authorized the liquidation and settlement of the claim of the heirs of Alexander Roxburgh, arising on a final-settlement certificate issued on the eighteenth of August, 1787, for \$480 87, by John Pierce, Commissioner for Settling Army Accounts, bearing interest from the first of January, 1782. (6 Stat. at L., 167.)

21. An Act approved April 14, 1818, authorized the accounting officers of the Treasury Department "to review the settlement of the account of John Thompson," made under the authority of an Act approved the eleventh of May, 1812, and "to allow the said John Thompson interest at six per cent per annum, from the fourth of March, 1787, to the twentieth of May, 1812, on the sum which was found due to him, and paid under the Act aforesaid." (6 Stat. at L., 208.)

22. An Act approved May 11, 1820, directed the proper officers of the Treasury to pay to Samuel B. Beall the amount of two final-settlement certificates issued to him on the first of February, 1785, for his services as a Lieutenant in the army of the United States during the revolutionary war, together with interest on the said certificates at the rate of six per cent per annum, from the time they bore interest, respectively, which said certificates were lost by the said Beall, and remain yet outstanding and unpaid. (6 Laws of U. S., 510; 6 Stat. at L., 249.)

23. An Act approved May 15, 1820, required that there be paid to Thomas Leiper the specie value of four loan-office certificates, issued to him by the Commissioner of Loans for the State of Pennsylvania, on the twenty-seventh of February, 1779, for one thousand dollars each; and also the specie value of two loan-certificates, issued to him by the said Commissioner on the second day of March, 1779, for one thousand dollars each, with interest at six per cent annually. (6 Stat. at L., 252.)

24. An Act approved May 7, 1822, provided that there be paid to the legal representatives of John Guthry, deceased, the sum of one hundred and twenty-three dollars and thirty cents, being the amount of a final-settlement certificate, with interest at the rate of six per cent per annum from the first day of January, 1788. (6 Stat. at L., 269.)

25. An Act for the relief of the legal representatives of James McClung, approved March 3, 1823, allowed interest on the amount due at the rate of six per cent per annum from January 1, 1788. (6 Stat. at L., 284.)

26. An Act approved March 3, 1823, for the relief of Daniel Seward, allowed interest to him for money paid to the United States for land to which the title failed, at the rate of six per cent per annum from January 29, 1814. (6 Stat. at L., 286.)

27. An Act approved May 5, 1824, directed the Secretary of the Treasury to pay to Amasa Stetson, the sum of six thousand two hundred and fifteen dollars, "being for interest on moneys advanced by him for the use of the United States, and on warrants issued in his favor, in the years 1814 and 1815, for his services in the Ordnance and Quartermaster's Department for superintending the making of army clothing and for issuing the public supplies." (6 Stat. at L., 298.)

28. An Act approved March 3, 1824, directing the proper accounting officers of the Treasury to settle and adjust the claim of Stephen Arnold, David and George Jenks, for the manufacture of three thousand nine hundred and twenty-five muskets, with interest thereon from the twenty-sixth day of October, 1813. (6 Stat. at L., 331.)

29. An Act approved May 20, 1826, directed the proper accounting officers of the Treasury to settle and adjust the claim of John Stemman and others for the manufacture of four thousand one hundred stand of arms, and to allow interest on the amount due from October 26, 1813. (6 Stat. at L., 345.)

30. An Act approved May 20, 1826, for the relief of Ann D. Taylor, directed the payment to her of the sum of three hundred and fifty-four dollars and fifteen cents, with interest thereon, at a rate of six per cent per annum from December 30, 1786, until paid. (6 Stat. at L., 351.)

31. An Act approved March 3, 1827, provided that the proper accounting officers of the Treasury were authorized to pay B. J. V. Valkenburg, the sum of five hundred and ninety-seven dollars and twenty-four cents, "being the amount of fourteen indents of interest, with interest thereon from the first of January, 1791, to the thirty-first of December, 1826." (6 Stat. at L., 365.)

In this case the United States paid interest on interest.

32. An Act approved May 29, 1828, provided that there be paid to the legal representatives of Patience Gordon the specie value of a certificate issued in the name of Patience Gordon by the Commissioner of Loans for the State of Pennsylvania, on the seventh of April, 1778, with interest at the rate of six per cent per annum from the first day of January, 1788. (7 Stat. at L., p. 378.)

33. An Act approved May 29, 1830, required the Treasury Department "to settle the accounts of Benjamin Wells, as Deputy Commissary of Issues at the Magazine at Monster Mill in Pennsylvania, under John Irvin, Deputy Commissary-General of the Army of the United States in said State in the revolutionary war;" and that "they credit him with the sum of five hundred and seventy-four dollars and four cents, as payable February 9, 1779, and three hundred and twenty-six dollars and sixty-seven cents, payable July 20, 1780, in the same manner and with such interest, as if these sums, with their interest from the times respectively aforesaid had been subscribed to the loan of the United States." (6 Stats. at Large, 447.)

34. An Act approved May 19, 1832, for the relief of Richard G. Morris, provided for the payment to him of two certificates issued to him by Timothy Pickering, Quartermaster-General, with interest thereon from the first of September, 1781. (6 Stats. at Large, 486.)

35. An Act approved July 4, 1832, for the relief of Aaron Snow, a revolutionary soldier, provided for the payment to him of two certificates issued by John Pierce, late Commissioner of Army Accounts, and dated in 1784, with interest thereon. (6 Stats. at Large, 503.)

36. An Act approved July 4, 1832, provided for the payment to W. P. Gibbs of a final-settlement certificate dated January 30, 1784, with interest at six per cent from the first of January, 1783, up to the passage of the Act. This Act went behind the final certificate and provided for the payment of interest anterior to its date. (6 Stats. at Large, 504.)

37. An Act approved July 14, 1832, directed the payment to the heirs of Ebenezer L. Warren of certain sums of money illegally demanded and received by the United States from the said Warren as one of the sureties of Daniel Evans, former Collector of Direct Taxes, with interest thereon at the rate of six per cent per annum from September 9, 1820. (6 Stats. at Large, 373.)

38. An Act for the relief of Hartwell Vick, approved July 14, 1832, directed the accounting officers of the Treasury to refund to the said Vick the money paid by him to the United States for a certain tract of land which was found not to be property of the United States, with interest thereon at the rate of six per centum per annum from the twenty-third day of May, 1818. (6 Stats. at Large, 523.)

39. An Act approved June 18, 1834, for the relief of Martha Bailey and others, directed the Secretary of the Treasury to pay to the parties therein named the sum of four thousand eight hundred and thirty-seven dollars and sixty-one cents, being the amount of interest upon the sum of two hundred thousand dollars, part of a balance due from the United States to Elbert Anderson on the twenty-sixth day of October, 1814; also the further sum of nine thousand five hundred and ninety-five dollars and thirty-six cents, being the amount of interest accruing from the deferred payment of warrants issued for balances due from the United States to said Anderson from the date of such warrants until the payment thereof; also the further sum of two thousand and eighteen dollars and fifty cents admitted to be due from the United States to the said Anderson by a decision of the Second Comptroller, with interest on the sum last mentioned from the period of such decision until paid. (6 Stats. at Large, 562.)

40. An Act approved June 10, 1834, directed the Secretary of the Treasury to pay balance of damages recovered against William C. H. Waddell, United States Marshal for the southern district of New York, for the illegal seizure of a certain importation of brandy on behalf of the United States, with legal interest on the amount of said judgment from the time the same was paid by the said Waddell. (6 Stats. at Large, 594.)

41. An Act approved February 17, 1836, directed the payment of the sum therein named to Marinus W. Gilbert, being the interest on money advanced by him to pay off troops in the service of the United States, and not repaid when demanded. (6 Stats. at Large, 622.)

42. An Act approved February 17, 1836, for the relief of the executor of Charles Wilkins, directed the Secretary of the Treasury to settle the claim of the said executor, for interest on a liquidated demand in favor of Jonathan Taylor, James Morrison, and Charles Wilkins, who were lessees of the United States of the salt works in the State of Illinois. (6 Stats. at Large, 626.)

43. An Act approved July 2, 1836, for the relief of the legal representatives of David Caldwell, directed the proper accounting officers of the Treasury to settle the claim of the said David Caldwell for fees and allowances, certified by the Circuit Court of the United States for the eastern district of Pennsylvania, for official services to the United States, and to pay on that account the sum of four hundred and ninety-six dollars and thirty-eight cents, with interest thereon at the rate of six per centum from the twenty-fifth day of November, 1830, till paid. (6 Stats. at Large, 664.)

44. An Act approved July 2, 1836, provided that there be paid Don Carlos Delossus interest at the rate of six per centum per annum on three hundred and thirty-three dollars, being the amount allowed him under the Act of July 14, 1832, for his relief, on account of moneys taken from him at the capture of Baton Rouge, La., on the twenty-third day of September, 1810, being the interest to be allowed from the said twenty-third day of September, 1810, to the fourteenth day of July, 1832. (6 Stats. at Large, 672.)

In this case the interest was directed to be paid four years after the principal had been satisfied and discharged.

45. An Act approved July 7, 1838, provided that the proper officers of the Treasury be directed to settle the accounts of Richard Harrison, formerly Consular Agent of the United States at Cadiz, in Spain, and allow him, among other items, the interest on the money advanced, under agreement with the Minister of the United States, in Spain, for the relief of destitute and distressed seamen, and for their passages to the United States, from the time the advances, respectively, were made to the time at which the said advances were reimbursed. (6 Stats. at Large, 734.)

46. An Act approved August 11, 1842, directed the Secretary of the Treasury to pay to John Johnson the sum of seven hundred and fifty-six dollars and eighty-two cents, being the amount received from the said Johnson upon a judgment against him in favor of the United States, together with the interest thereon from the time of such payment. (6 Stats. at Large, 856.)

47. An Act approved August 3, 1846, authorized the Secretary of the Treasury to pay to Abraham Horbach the sum of five thousand dollars, with lawful interest from the first of

January, 1836, being the amount of a draft drawn by James Reeside on the Post Office Department, dated April 18, 1835, payable on the first of January, 1836, and accepted by the Treasurer of the Post Office Department, which said draft was indorsed by said Abraham Horbach, at the instance of the said Reeside, and the amount drawn from the Bank of Philadelphia, and, at maturity, said draft was protested for non-payment, and said Horbach became liable to pay, and, in consequence of his indorsement, did pay the full amount of said draft. (9 Stats. at Large, 677.)

48. An Act approved February 5, 1859, authorized the Secretary of War to pay to Thomas Laurent, as surviving partner, the sum of fifteen thousand dollars, with interest at the rate of six per cent yearly, from the eleventh of November, 1847, it being the amount paid by the firm on that day to Major-General Winfield Scott, in the City of Mexico, for the purchase of a house in said city, out of the possession of which they were since ousted by the Mexican authorities. (11 Stats. at Large, 558.)

49. An Act approved March 2, 1847, directed the Secretary of the Treasury to pay the balance due to the Bank of Metropolis for moneys due upon the settlement of the account of the bank with the United States, with interest thereon from the sixth day of March, 1838. (9 Stats. at Large, 689.)

50. An Act approved July 20, 1852, directed the payment to the legal representative of James C. Watson, late of the State of Georgia, the sum of fourteen thousand six hundred dollars, with interest at the rate of six per cent per annum, from the eighth day of May, 1838, till paid, being the amount paid by him, under the sanction of the Indian Agent, to certain Creek warriors, for slaves captured by said warriors while they were in the service of the United States against the Seminole Indians in Florida. (10 Stats. at Large, 734.)

51. An Act approved July 29, 1854, directed the Secretary of the Treasury to pay to John C. Fremont one hundred and eighty-three thousand eight hundred and twenty-five dollars, with interest thereon from the first day of June, 1851, at the rate of ten per cent per annum, in full for his account for beef delivered to Commissioner Barbour, for the use of the Indians in California, in 1851 and 1852. (10 Stats. at Large, 804.)

52. An Act approved July 8, 1870, directed the Secretary of the Treasury to make proper payments to carry into effect the decree of the District Court of the United States for the District of Louisiana, bearing date the fourth of June, 1867, in the case of the British brig "Volan," and her cargo; and also another decree of the same Court, bearing date the eleventh of June, in the same year, in the case of the British bark "Science" and cargo, vessels illegally seized by a cruiser of the United States, such payments to be made as follows, viz.: To the several persons named in such decrees, or their legal representatives, the several sums awarded to them respectively, with interest to each person from the date of the decree under which he receives payment. (16 Stats. at Large, 650.)

53. An Act approved July 8, 1870, directed the Secretary to make the proper payments to carry into effect the decree of the District Court of the United States for the District of Louisiana, bearing date July 13, 1867, in the case of the British brig "Dashing Wave," and her cargo, illegally seized by a cruiser of the United States, which decree was made in pursuance of the decision of the Supreme Court, such payments to be made with interest from the date of the decree. (16 Stats. at Large, 651.)

An examination of these cases will show that subsequent to the seizure of these several vessels, they were each sold by the United States Marshal for the District of Louisiana as prize, and the proceeds of such sales deposited by him in the First National Bank of New Orleans. The bank, while the proceeds of these sale were on deposit there, became insolvent. The seizures were held illegal, and the vessels not subject to capture as prize. But the proceeds of the sales of these vessels, and their cargoes, could not be restored to the owners in accordance of the decrees of the District Court, because the funds had been lost by the insolvency of the bank. In these cases, therefore, Congress provided indemnity for losses resulting from the acts of its agents, and made the indemnity complete by providing for the payment of interest.

Your committee have directed attention to these numerous precedents for the purpose of exposing the utter want of foundation of the often repeated assumption that "the Government never pays interest." It will readily be admitted that there is no statute law to sustain this position. The idea has grown up from the custom and usage of the accounting officers and Departments refusing to allow interest generally in their accounts with disbursing officers, and in the settlement of unliquidated domestic claims arising out of dealings with the Government. It will hardly be pretended, however, that this custom or usage is so "reasonable," well-known, and "certain," as to give it the force and effect of law, and to override and trample under foot the law of nations and also the well settled practice of the Government itself in its intercourse with other nations.

11th. Interest was allowed and paid to the State of Massachusetts because the United States delayed the payment of the principal for twenty-two years after the amount due had been ascertained and determined. The amount appropriated to pay this interest was \$678,362 41, more than the original principal. (16 Stats. at Large, 198.)

Mr. Sumner, in his report upon the memorial introduced for that purpose, discussing this question of interest, said:

"It is urged that the payment of this interest would establish a bad precedent. If the claim is just, the precedent of paying it is one of which our Government should wish to establish. Honesty and justice are not precedents of which either Government or individuals should be afraid." (Senate Report 4, Forty-first Congress, first session, p. 10.)

12th. Interest has always been allowed to the several States for advances made to the United States for military purposes.

The claims of the several States for advances during the revolutionary war were adjusted and settled under the provision of the Acts of Congress of August 5, 1790, and of May 31, 1794. By these Acts interest was allowed to the States, whether they had advanced money on hand in their treasuries or obtained by loans.

In respect to the advances of States during the war of 1812-15, a more restricted rule was adopted, viz.: That States should be allowed interest only so far as they had themselves paid it by borrowing, or had lost it by the sale of interest-bearing funds.

Interest, according to this rule, has been paid to all the States which made advances during the war of 1812-15, with the exception of Massachusetts. Here are the cases:

Virginia, U. S. Stats. at Large, vol. 4, p. 161.

Delaware, U. S. Stats. at Large, vol. 4, p. 175.

New York, U. S. Stats. at Large, vol. 4, p. 192.

Pennsylvania, U. S. Stats. at Large, vol. 4, p. 241.

South Carolina, U. S. Stats. at Large, vol. 4, p. 499.

In Indian and other wars the same rule has been observed, as in the following cases:

Alabama, U. S. Stats. at Large, vol. 9, p. 344.

Georgia, U. S. Stats. at Large, vol. 9, p. 626.

Washington Territory, U. S. Stats. at Large, vol. 11, p. 429.

New Hampshire, U. S. Stats. at Large, vol. 10, p. 1.

13th. The Senate Committee on Indian Affairs, in the report to which reference has heretofore been made, speaking of this award and of the obligation of the United States to pay interest upon the balance remaining due and unpaid thereon, used the following language:

"Your committee are of opinion that this sum should be paid them with accrued interest from the date of said award, deducting therefrom \$250,000, paid to them in money, as directed by the Act of March 2, 1861; and, therefore, find no sufficient reason for further delay in carrying into effect that provision of the aforementioned Act, and the Act of March 3, 1871, by the delivery of the bonds therein described, with accrued interest from the date of the Act of March 8, 1861.

"Your committee have discussed this question with an anxious desire to come to such a conclusion in regard to it as would do no injustice to that Indian nation whose rights are involved here, nor establish such a precedent as would be inconsistent with the practice or duty of the United States in such cases. Therefore, your committee have considered it not only by the light of those principles of the public law—always in harmony with the highest demands of the most perfect justice—but also in the light of those numerous precedents which this Government in its action in litigation has furnished for our guidance. Your committee cannot believe that the payment of interest on the moneys awarded by the Senate to the Choctaw Nation would either violate any principle of law or establish any precedent which the United States would not wish to follow in any similar case, and your committee cannot believe that the United States are prepared to repudiate these principles, or to admit that because their obligation is held by a weak and powerless Indian nation it is any the less sacred or binding than if held by a nation able to enforce its payment and secure complete indemnity under it. Could the United States escape the payment of interest to Great Britain, if it should refuse or neglect, after the same became due, to pay the amount awarded in favor of British subjects by the recent joint commission which sat here? Could we delay payment of the amount awarded by that commission for fifteen years, and then escape by merely paying the principal? The Choctaw Nation asks the same measure of justice which we must accord to Great Britain; and your committee cannot deny that demand unless they shall ignore and set aside those principles of the public law which it is of the utmost importance to the United States to always maintain inviolate.

"Your committee are not unmindful that the amount due the Choctaw Nation under the award of the Senate is large. They are not unmindful, either, that the discredit of refusing payment is increased in proportion to the amount withheld and the time during which refusal has been continued."

Few, if any, of the foregoing cases presented as strong and meritorious grounds for the allowance of interest as the claim now under consideration. Following these precedents, and for the reasons above set forth, the committee deem the present a proper case for the payment of interest on the sum converted (\$371,025) from date of conversion to date of payment. This interest they fix at the rate of four and a half (4½) per centum per annum, that being about the average rate paid by the Government between 1867 and 1881, and which it may be fairly assumed was saved or made by it for the use of the funds during the period of detention. On this basis the interest allowed will amount to the sum of \$249,039 95.

The committee accordingly recommend that the bill be amended as follows: In line one of Section 2 strike out the words "seventy-five" and insert in lieu thereof "forty-nine," and in line second of said section after the word "thousand," insert the words "and thirty-nine and ninety-five hundredths." And as thus amended that the bill be passed by the Senate.

In addition to the precedents cited in the foregoing Senate report, the committee refer to the following cases in which interest has been allowed by Act of Congress or paid by the Treasury Department:

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James Derry .....	August 11, 1790 .....	6	4
Benjamin Hardison .....	August 11, 1790 .....	6	4
Widow of General Lord Stirling .....	August 11, 1790 .....	6	4
Child of Colonel Laurens .....	August 11, 1790 .....	6	5
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Widow of Captain White .....	March 27, 1792 .....	6	6
Widow of Colonel Elliott .....	March 27, 1792 .....	6	6
Widow of Major Wise .....	March 27, 1792 .....	6	6
Widow of Major Huger .....	March 27, 1792 .....	6	6
Widow of Lieutenant Bush .....	March 27, 1792 .....	6	6
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Every fact in the present case has been officially found by the Court of Claims, and that Court in delivering judgment (16 Court of Claims Reports, 73) characterized the transaction as "simply a case of a bank being robbed, and of its stolen assets being put into the hands of the Cashier of the Sub-Treasury for a purpose which by no possible view could in law be held to

effect a transfer of the bank's right of property in them either to him or to the United States." Demand was immediately made for the return of the money, but it remained in the hands of the Government for fifteen years, and then repayment of the principal was made. So that the United States was able to hold property, which its Courts has declared it had no right to hold, until it earned enough at six per cent to pay for it. Surely reparation should be made in such a case. The principle of repaying interest under such circumstances seems to be established, in the language of several distinguished committees of this House, as follows:

It will be found, upon examination of the precedents where Congress has passed Acts for the relief of citizens of the United States, that in almost every case where the Government has withheld a sum of money which had been decided by competent authority to be due, or where the amount was ascertained, fixed, and definite, Congress has directed the payment of interest, together with the principal. (Report No. 17, Forty-sixth Congress, first session; Report No. 1568, Forty-eighth Congress, first session; Report No. 661, Forty-ninth Congress, first session.)

For a stronger reason should this be so in the present case, where not only was the amount ascertained, fixed, and definite, but where, also, the creditor relation was not voluntary, but was forced upon the claimants by the United States, who became, therefore, tort debtors.

There is abundant proof to show that at the time the property of the bank was transferred to the Sub-Treasury of the United States the bank was earning from eight to ten per cent upon its assets, being in a very prosperous condition. The bill calls for the payment of five per cent interest, but the Senate committee have found that four and a half per cent was about the average rate of interest paid by the Government between 1867 and 1881, and accordingly your committee, recognizing the fact that the Government ought not to pay a higher rate of interest on this claim than they were in the habit of paying to other creditors, recommend that the bill be amended by striking out in lines 1 and 2, of Section 2, the words "two hundred and seventy-five thousand dollars," and inserting in lieu thereof the words "two hundred and forty-nine thousand thirty-nine dollars and ninety-five cents," and thus amended, recommend its passage.

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## EXHIBITS

TO

# FEE CLAIM, ETC.

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**EXHIBIT No. 1.**

[Copy.]

STATE OF CALIFORNIA, OFFICE OF SURVEYOR-GENERAL.

[Official.]

Subject to the approval and ratification of the Legislature of the State of California, I hereby appoint Captain John Mullan to represent this State and collect therefor such amounts of money as have been paid by said State to the Registers and Receivers of the several U. S. Land Offices, as fees for the selections of lands, as provided by law, and which selections, for cause satisfactorily shown, were not approved, confirmed, or certified to said State, but subsequently rejected and canceled, and to the restitution of which fees the State is entitled.

No expense connected with the collection of said amounts to be considered a claim against the State, and Capt. Mullan to receive as compensation in full for said collection, the sum of twenty per cent (20 per cent) of the amount collected and receipted for by the State.

Witness my hand and seal this twenty-fourth day of October, 1883.

[Signed:]

H. I. WILLEY, Surveyor-General.

[Official.]

OFFICE OF SURVEYOR-GENERAL AND EX OFFICIO STATE LAND REGISTER }  
OF THE STATE OF CALIFORNIA, December 1, 1885. }

*Captain JOHN MULLAN, Washington, D. C.:*

SIR: I hereby appoint you Special Agent on the part of this office, and of the State of California (subject to the action of the Legislature of the State of California), to represent the interests of this office, and that of the State of California, before Congress, and before the proper Bureaus and Departments of the Government of the United States, at Washington City, D. C., in the matter of all lands inuring to the State of California, under the Acts of Congress approved September 28, 1850, and July 23, 1866, in regard to all swamp or overflowed lands, which have been heretofore sold or otherwise disposed of by the United States, to the loss or detriment of this State.

With a view of securing for this State a proper indemnity, in either lands or money, for such swamp or overflowed lands as have been heretofore so sold, or otherwise disposed of by the United States.

H. I. WILLEY, Surveyor-General.

**EXHIBIT No. 2.**

Forty-ninth Congress, first session. H. R. No. 3222.

In the House of Representatives. January 11, 1886—Read twice, referred to the Committee on the Public Lands, and ordered to be printed.

Mr. Henley introduced the following bill:

**A BILL**

*To extend certain provisions of an Act approved March second, eighteen hundred and fifty-five, entitled "An Act for the relief of purchasers and locators of swamp and overflowed lands."*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That all entries, locations, selections, and disposals of the swamp lands, or of lands alleged to be swamp, under any law of the United States made since the third day of March, eighteen hundred and fifty-seven, be and the same are hereby confirmed, and patents shall issue to such purchasers, locators, or grantees thereof; provided, that if any State shall not, within one year from the passage of this Act, through its constituted authorities, return to the General Land Office of the United States a list of all the lands sold by the State as aforesaid, together with the dates of such sale and the names of the purchasers, and also of all lands granted or conveyed by her as aforesaid, the patents shall be issued immediately thereafter as above provided.*

SEC. 2. That the second section of the Act of March second, eighteen hundred and fifty-five, entitled "An Act for the relief of purchasers and locators of swamp and overflowed lands," be and is hereby continued in force and extended to all States, for all lands the entry, selection, or location of which is confirmed by the preceding section; *provided, that none of the provisions of the first section of this Act shall apply to entries, locations, or selections, of lands in the States of Oregon and Minnesota prior to March twelfth, eighteen hundred and sixty; neither shall said States be allowed indemnity for swamp lands sold or located prior to that date; and provided further, that cash indemnity only shall be allowed for all locations, entries, selections, and disposals of swamp lands; and the amount of cash to which any State shall be entitled shall be the price at which the land was held at the date of location, entry, selection, or disposal, by the General Government.*

**EXHIBIT No. 3.**

[Report No. 1089.]

In the House of Representatives. January 26, 1886—Read twice, referred to the Committee on the Public Lands, and ordered to be printed.

March 17, 1886—Reported with amendments, committed to the Committee of the Whole House on the state of the Union, and ordered to be printed.

Omit the parts struck through and insert the parts printed in *italics*.

Mr. Caswell introduced the following bill:

**A BILL**

*For the relief of purchasers and other grantees of the United States of certain swamp and overflowed lands, and to reimburse and indemnify certain States.*

WHEREAS, The United States has, by various Acts of Congress, granted to several of the States certain of the swamp and overflowed lands situate within their respective limits; and whereas, some of said swamp and overflowed lands were thereafter erroneously sold and otherwise disposed of by the United States, in derogation of the rights of the States entitled thereto, and contrary to and in violation of the provisions of the grants aforesaid; and whereas, no adequate indemnity to said States or relief to the purchasers of said lands has been hitherto provided; therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That it shall be the duty of the proper officers of the Treasury and Interior Departments to adjust and settle the claims of any State against the United States for all lands which have been or may hereafter be sold or otherwise disposed of by the United States that were included in any grant of swamp or overflowed lands to such State.*

SEC. 2. That for all of said lands in any State which were sold for cash the said State shall have the credit for the full amount of the purchase money received by the United States, as of the last day of the year in which it was received, and the same shall be applied to the payment of the indebtedness, if any, of such State to the United States; and the balance, less such sum or sums as may have heretofore been paid or credited as aforesaid, shall be paid over to the Governor or other duly authorized agent of said State; and for all of said lands in any State located with warrants or scrip, or which were otherwise disposed of by the United States, and for which indemnity has not heretofore been granted such State, *shall have indemnity in cash, the amount thereof to be limited to the price at which the lands were held at the date of their disposal by the United States, the said indemnity to be credited and paid as herein provided in the cases where lands were sold for cash; provided, that the acceptance by any State or its legal representative of indemnity, for any of the lands sold or otherwise disposed of by the United States, shall be a relinquishment and waiver of all its right, title, and interest in and to such lands, and an acknowledgment and confirmation of the title thereto in the grantees of the United States.*

SEC. 3. *That the provisions of this Act shall embrace the swamp and overflowed lands on the odd sections within the six-mile limits of the line of railroad between Chicago and Mobile constructed under the Act of Congress approved September twentieth, eighteen hundred and fifty.*



## EXHIBIT No. 4.

Forty-ninth Congress, first session. House of Representatives. Report No. 1089.

## SWAMP AND OVERFLOWED LANDS.

March 17, 1886—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Van Eaton, from the Committee on the Public Lands, submitted the following

## REPORT.

[To accompany bill H. R. 4792.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 4792), for the relief of purchasers and other grantees of the United States of certain swamp and overflowed lands, and to reimburse and indemnify certain States, have had the same under consideration and report:

There have been three grants of swamp and overflowed lands by the United States to States in which such lands were situate, namely, to Louisiana in 1849, to all public land States in 1850, and to Minnesota and Oregon in 1860. For all practical purposes these Acts were alike in their provisions and granted to these States all the unsold lands of that character within their respective limits. They were grants *in presenti*, without condition of any kind, and conveyed, *proprio rigore*, to the respective States all lands coming within the descriptive terms used in the statutes. Although the language of these statutes is so plain and unambiguous as apparently not to require judicial interpretation or construction, yet, upon one pretext or another, they have been before various Courts, both State and National, for consideration, and the right and the title of the States to these lands repeatedly and uniformly confirmed. The scope of the decisions rendered will sufficiently appear in the following brief quotations from the opinions of the Supreme Court of the United States.

In *Railroad Company vs. Smith* (9 Wallace, 95), that Court says:

The Act of September 28, 1850, was a present grant by Congress of certain lands to the States within which they lie, but by a description which requires something more than a mere reference to their townships, ranges, and sections to identify them as coming within it. \* \* \*

By the second section of the Act of 1850 it was made the duty of the Secretary of the Interior to ascertain this fact, namely, what tracts were so swampy, overflowed, and wet as that the major parts thereof were unfit for cultivation, and furnish the State with the evidence of it. Must the State lose the lands, though clearly swamp land, because that officer has neglected to do this? The right of the State did not depend on his action, but on the Act of Congress, and though the State might be embarrassed in the assertion of this right by the delay or failure of the Secretary to ascertain and make out lists of these lands, the right of the State to them could not be defeated by that delay.

And in the latter case of *French vs. Fyan et al.* (3 Otto, 169), the same Court says:

This Court has decided more than once that the swamp land Act was a grant *in presenti*, by which the title to those lands passed at once to the State in which they lay, except as to States admitted to the Union after its passage.

It was not necessary that the States should submit any selections, or prefer any requests, or make any demands. "The title to those lands passed at once," and it was made the duty of the Secretary of the Interior to ascertain the particular tracts of land which were included, described, and conveyed in the grant, and certify them to the States. Sales, locations, and entries of these lands have been made and patents issued, not-

withstanding the fact that it was not competent for the Government to give a valid title to the said lands so embraced in these grants to any other than the grantees named in the Acts of Congress. These facts coming to the attention of Congress, a remedial statute was passed in 1855, and another in 1857, providing indemnity to the States and confirming the title of the innocent purchasers and locators of the lands; but through oversight or purchase, because it was supposed the irregular practices which made these statutes necessary would not be continued, they were not made prospective and continuing in their application.

Notwithstanding the laws and the decisions of Courts and the rulings of the department itself, the practice has continued of not considering any lands as coming within the purview of the swamp grants until the States should select and prove them to be such, and sales and other disposals of these lands have continued to the present time. Hence the necessity for further remedial legislation, which should be, if possible, coextensive with the injuries inflicted.

The result of the continued disposal of these lands, to which reference has been made, has been and is a double injustice to the States, and manifests itself, (1) in the unjust and illegal diminution of a fund upon which they had a right to rely, and (2) in the initiating of a series of worthless and void titles and the litigations and losses to which they give rise, evidenced in part by the reports of over seventy cases decided in the Courts of last resort in the several States, and cited in the report of the commission on the codification of the land laws of the United States, vol. 1, pages 57 and 58.

These conditions, in the opinion of your committee, give rise to just claims against the United States, both on the part of States and the individuals who find themselves without title to lands for which they have paid full consideration, and demand attentive consideration and speedy action by Congress.

It is for the adjustment of these claims, and these only, that the bill herewith reported provides. It does not make any grant or renew or enlarge or modify any previous grant. It does not reverse, set aside, or modify any decisions of the Courts. On the contrary, it is in entire consonance with these and simply and only provides for carrying them into effect in a direct and equitable manner.

Briefly restated the case is as follows:

There are certain moneys in the Treasury of the United States which in law and in fact belong to certain States, because received by the United States for the property of these States wrongfully and illegally sold by it, and the proceeds thereof converted to its use. This bill provides that these moneys shall be returned to the rightful owners. To meet the further fact that the United States has assumed to dispose of other lands not its own otherwise than for cash, this bill, when amended as proposed by the committee, provides that the United States shall make compensation therefor in cash at the rate at which the lands were held when disposed of, with the proviso that the acceptance of indemnity shall be a relinquishment of the title and rights derived through the grant and a confirmation of the title and right of parties holding under the subsequent irregular and unauthorized conveyances from the United States.

For the purpose of making the bill conform to what they believe to be the dominant public sentiment and to embrace all the cases calling for congressional intervention, your committee recommend the following amendments, namely:

In section two strike out all after the word "State" in the twelfth line

down to and including the word "may" in the twenty-first line, and insert in lieu thereof the word "shall." Also insert the words "or its legal representatives," after the word "State" in the twenty-seventh line, and strike out in same line the words "whether in cash or in land." Also add a new section, as follows:

"SEC. 3. The provisions of this bill shall embrace the swamp and overflowed lands on the odd sections within the six-mile limits of the line of railroad between Chicago and Mobile, constructed under the Act of Congress approved September 20, 1850."

The recommendation of the committee to pay cash indemnity only is made from the fact that the public lands fit for agricultural purposes should be set apart for the purpose of settlement and homestead, and is in harmony with the growing sentiment of the people in all the States. The day for the issue of scrip which can be floated by speculators on the choicest portion of public lands has passed.

With reference to the proposed section three, which the committee have added, it will suffice to say it was found, on examination of the law and the facts, that the even-numbered sections were granted to aid in the construction of the railroad referred to, and that the swamp lands on the odd sections within the six-mile limits of the road that remained unsold on the twenty-eighth day of September, 1850, have been subsequently sold by the United States, and the proceeds paid into its Treasury—most of it thirty years ago. Where these odd sections were vacant on the third of March, 1857, the United States has certified them to the State under the swamp land grant, but where the same have been sold the Government has declined to pay indemnity, on the ground that they were withdrawn from sale by letter of the President eight days before the swamp land grant was passed.

Your committee do not see that this letter of withdrawal took it out of the power of Congress to grant these lands to the States eight days after it was written. By the later Act all the swamp and overflowed lands remaining unsold at the date of its passage were granted to the States within which they were situate without any reservation whatever. If, therefore, the withdrawal of these lands was not a sale of them they "remained unsold" and passed by the grant. But that said withdrawal was not a sale or so considered is evidenced by the fact that in due time the lands were restored to market, sold, and the money received paid into the Treasury of the United States.

The same conditions surround these lands that surround all other swamp lands, wherever situated. There is the same necessity for perfecting title in those persons to whom the United States has wrongfully conveyed these lands, and the same obligation on the part of the Government to pay indemnity to the State. This section does not in any way enlarge the grant as originally made. It simply recognizes what the Courts have repeatedly decided.

Your committee have had various bills before them and find they are similar to bills which have been before every Congress since 1865. Special Acts have since that date been passed for several of the States or their grantees, but no general bill of a remedial nature has yet become a law.

In conclusion your committee would state that this bill, with the proposed amendments, makes provision for the final adjustment of the vexed questions arising out of the swamp land grant as to all the States interested, and is in harmony with the views of all State and United States Courts, as expressed in numerous decisions. They, therefore, report the bill back with amendments and recommend its passage.

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## P E T I T I O N

OF

Members of Police Department of San Francisco,

URGING THE PASSAGE OF SENATE BILL NO. 69.

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# PETITION.

*To the honorable the Senate and Assembly of the State of California:*

GENTLEMEN: The undersigned members of the police department of San Francisco, respectfully ask you to pass Senate Bill No. 69, this bill being the one which has been framed by our committee and contains the provisions which we desire:

John Short.....	Captain of Police.	E. Nettleton.....	Patrolman.
R. J. Falls.....	Sergeant of Police.	Michael Flannery.....	Patrolman.
Wm. L. Coles.....	Sergeant of Police.	M. O. Anderson.....	Police Officer.
John W. Flinn.....	Patrolman.	C. M. Johnson.....	Police Officer.
Charles P. Bush.....	Patrolman.	A. A. Perrin.....	Police Officer.
Chas. M. Janes.....	Patrolman.	James Fay.....	Police Officer.
Patrick Menihan.....	Patrolman.	Cornelius Buckley.....	Police Officer.
Thomas Leroux.....	Patrolman.	P. Whittle.....	Police Officer.
John Wallace.....	Patrolman.	G. Videau.....	Police Officer.
Harald Holmen.....	Patrolman.	Joseph Enwright.....	Police Officer.
Joseph Doran.....	Patrolman.	Henry S. Robinson.....	Police Officer.
Joseph H. Brigaerts.....	Patrolman.	Thomas R. Judson.....	Police Officer.
David Supple.....	Patrolman.	S. Sandman.....	Police Officer.
Charles Joseph O'Connell.....	Patrolman.	Thos. Meehan.....	Police Officer.
Isaac Bradrick.....	Patrolman.	Michael Murphy.....	Sergeant.
R. G. Harris.....	Patrolman.	Peter Fox.....	Police Officer.
Geo. Stevens.....	Patrolman.	Peter I. Whalen.....	Police Officer.
J. K. Porter.....	Patrolman.	Charles Bauer.....	Police Officer.
Daniel Coleman.....	Patrolman.	Charles Cullum.....	Police Officer.
James O'Donnell.....	Patrolman.	Daniel P. Rairdon.....	Police Officer.
P. J. Tobin.....	Sergeant.	Eugene Harrigan.....	Police Officer.
Jeremiah J. Clifford.....	Patrolman.	William Little.....	Police Officer.
Cornelius Kelly.....	Patrolman.	R. C. Pike.....	Police Officer.
J. C. Daly.....	Patrolman.	Geo. Eastman.....	Police Officer.
Joseph M. Mooney.....	Patrolman.	Harrison Moran.....	Police Officer.
James S. Annis.....	Patrolman.	Thos. Stanton.....	Police Officer.
Thomas D. Barnstead.....	Sergeant.	J. D. Custer.....	Police Officer.
Michael Dower.....	Patrolman.	Thos. W. Greggains.....	Police Officer.
J. Gilfoy.....	Patrolman.	R. L. Rivers.....	Police Officer.
R. J. Fally, Jr.....	Patrolman.	James L. Gallagher.....	Police Officer.
Henry Newman.....	Patrolman.	Thos. O'Shea.....	Police Officer.
John M. Morton.....	Patrolman.	H. F. Roskamp.....	Police Officer.
Elliott Farley.....	Patrolman.	Charles O'Malley.....	Police Officer.
M. A. Mahon.....	Patrolman.	John Cronin.....	Police Officer.
P. J. Dwyer.....	Patrolman.	A. W. Haskell.....	Police Officer.
James Norton.....	Patrolman.	John P. Woest.....	Police Officer.
John Spillone.....	Sergeant.	R. G. Wilson.....	Police Officer.
John F. Seymon.....	Patrolman.	James Smith.....	Police Officer.
H. Q. Blaisdell.....	Patrolman.	Thomas Dillon.....	Police Officer.
Daniel Reardon.....	Patrolman.	Thos. C. Tryon.....	Police Officer.
Patrick Shea.....	Patrolman.	D. C. Libby.....	Police Officer.

Geo. W. Bennett.....	Police Officer.	J. P. McDermott.....	Officer.
William E. Gwinn.....	Police Officer.	John Manning.....	Officer.
Jas. M. Marshall.....	Police Officer.	Cornelius Donohoe.....	Officer.
A. Grant.....	Police Officer.	John McGreevy.....	Officer.
John Connolly.....	Police Officer.	Thomas H. Dillon.....	Officer.
M. Whelan.....	Police Officer.	Richard Scott.....	Officer.
Thos. P. Ellis.....	Police Officer.	Geo. Clinton.....	Officer.
C. H. Witham.....	Sergeant.	Thos. Gillispie.....	Officer.
Richard Ennis.....	Police Officer.	Thos. McGlynn.....	Officer.
John Morgan.....	Police Officer.	Robert L. Cockrill.....	Officer.
F. C. McMahon.....	Police Officer.	Edward Ward.....	Officer.
Wm. H. Shear.....	Police Officer.	W. H. Kurtzell.....	Officer.
Patk. J. O'Donnell.....	Police Officer.	Jas. H. Cochran.....	Officer.
John R. O'Connor.....	Police Officer.	Thomas Furlong.....	Officer.
Wm. W. Whan.....	Police Officer.	Wm. D. Hensley.....	Officer.
Thomas W. Thompsons.....	Police Officer.	P. Crowley.....	Chief of Police.
John W. Hamerton.....	Police Officer.	I. W. Lees.....	Captain of Detectives.
Charles Crockett.....	Police Officer.	B. F. Bohen.....	Officer.
Matthew Wilson.....	Police Officer.	Amos Bainbridge.....	Officer.
James O'Conner.....	Police Officer.	Wm. Glennon.....	Officer.
Maurice Hayes.....	Police Officer.	C. C. Cox.....	Officer.
Thomas F. Bean.....	Police Officer.	John Meagher.....	Officer.
P. E. Fleming.....	Police Officer.	Edward Byram.....	Officer.
John J. Allen.....	Police Officer.	Daniel Coffey.....	Officer.
John Judge.....	Police Officer.	R. M. Silvey.....	Officer.
John T. Fitzhenry.....	Police Officer.	John T. Wright.....	Officer.
Robert McConnell.....	Police Officer.	James Hanley.....	Officer.
Edward E. Dalton.....	Police Officer.	James H. Hutton.....	Officer.
J. E. Poole.....	Police Officer.	C. Martin.....	Officer.
Smith Carr.....	Police Officer.	Joseph Bee.....	Officer.
H. H. Murphy.....	Police Officer.	H. H. Cosby.....	Officer.
Edgar Stevens.....	Police Officer.	Henry Blair.....	Officer.
Thomas Flanders.....	Sergeant.	Alfred Clarke.....	Officer.
P. O'Connor.....	Police Officer.	John W. Moffitt.....	Officer.
Gideon Thompson.....	Sergeant.	Wm. Cullen.....	Officer.
M. A. Loftus.....	Police Officer.	Wm. T. Wiswall.....	Officer.
G. A. Wolweber.....	Police Officer.	H. Dowd.....	Officer.
J. J. Hayes.....	Police Officer.	Charles H. McDonald.....	Officer.
James Pugh.....	Police Officer.	John Duncan.....	Officer.
James A. Lane.....	Police Officer.	C. S. Stout.....	Officer.
George O'Connell.....	Police Officer.	Jas. McNamara.....	Officer.
James Aitken.....	Police Officer.	A. D. McKenna.....	Officer.
Harry Hook.....	Police Officer.	G. D. Harper.....	Officer.
A. J. Donlevy.....	Captain.	Owen Gorman.....	Officer.
Thos. R. Langford.....	Sergeant.	Wm. E. Hall.....	Officer.
William Doran.....	Sergeant.	Thos. A. Wallace.....	Officer.
Stephen Bunner.....	Sergeant.	Daniel Hannah.....	Officer.
Edward M. Egan.....	Officer.	H. S. Healey.....	Officer.
J. P. Baxter.....	Officer.	Thomas W. Bethett.....	Officer.
S. Pomeroy.....	Officer.	W. P. Lean.....	Officer.
W. Ferguson.....	Officer.	H. H. Handley.....	Officer.
J. H. Kavanagh.....	Officer.	Robt. John Kerrison.....	Officer.
John R. Dower.....	Officer.	Henry F. Roskamp.....	Officer.
J. H. Helms.....	Officer.	James R. Rogers.....	Officer.
John Avan.....	Officer.	Robert Hogan.....	Officer.
Thos. Mahoney.....	Officer.	John Coffey.....	Officer.
G. W. Hogan.....	Officer.	A. B. Asher.....	Officer.
C. W. Wall.....	Officer.	James F. Moran.....	Officer.

William G. Douglass.....	Captain of Police.	J. C. Hall.....	Police Officer.
A. W. Stone.....	Captain of Police.	W. H. Nelson.....	Police Officer.
William Warnock.....	Police Officer.	Bernard Harter.....	Sergeant of Police.
J. E. Burress.....	Police Officer.	Edmond R. Alford.....	Police Officer.
James A. Mahoney.....	Police Officer.	M. E. Mahony.....	Police Officer.
A. M. Williams.....	Police Officer.	John Rainsbury.....	Police Officer.
William Hennehey.....	Police Officer.	George DeBlois.....	Police Officer.
J. W. Wallace.....	Police Officer.	P. T. Kelly.....	Police Officer.
V. F. Dowd.....	Police Officer.	James P. McCarthy.....	Police Officer.
George W. Curtis.....	Police Officer.	Shadrack Campbell.....	Police Officer.
William Gaynor.....	Police Officer.	Patrick Walsh.....	Police Officer.
Daniel Leahy.....	Police Officer.	John Schroder.....	Police Officer.
H. C. Reynolds.....	Police Officer.	Edward B. Carr.....	Police Officer.
Samuel B. Alden, Jr.....	Police Officer.	John Powers.....	Police Officer.
Charles Nash.....	Sergeant of Police.	B. McManus.....	Police Officer.
Michael Fitzgerald.....	Sergeant of Police.	Wm. Birch.....	Police Officer.
Joseph Melody.....	Sergeant of Police.	Patrick Coughran.....	Police Officer.
Maiken Lindheimer.....	Sergeant of Police.	W. C. Smith.....	Police Officer.
James Harold.....	Police Officer.	William Bingle.....	Police Officer.
R. C. Gilchrist.....	Police Officer.	Peter Burns.....	Police Officer.
Neil Carmichael.....	Police Officer.	Michael Brickley.....	Police Officer.
Benjamin Kaskell.....	Police Officer.	John A. McGrath.....	Police Officer.
Thomas J. Cavanagh.....	Police Officer.	Turner Love.....	Police Officer.
A. J. Houghtaling.....	Sergeant of Police.	William Burdett.....	Police Officer.
Michael J. Conboy.....	Police Officer.	Edward Cohen.....	Sergeant of Police.
S. C. Fleming.....	Sergeant of Police.	John Warren.....	Police Officer.
Joseph Linskey.....	Sergeant of Police.	Dennis Hayden.....	Police Officer.
I. W. Shields.....	Sergeant of Police.	Hugh McCaffery.....	Police Officer.
J. A. Wilson.....	Sergeant of Police.	John Sullivan.....	Police Officer.
T. H. Callahan.....	Police Officer.	Abraham Sharp.....	Sergeant of Police.
James F. Fitzpatrick.....	Police Officer.	John Burke.....	Corporal of Police.
George L. Gans.....	Sergeant of Police.	M. Hayes.....	Police Officer.
Patrick Crosby.....	Police Officer.	Chas. Johnson.....	Police Officer.
Michael Carroll.....	Police Officer.	Frederick Smith.....	Police Officer.
Geo. O. Comstock.....	Police Officer.	John MacLean.....	Police Officer.
Jacob Lenner.....	Police Officer.	J. W. Patten.....	Police Officer.
Geo. W. Russell.....	Police Officer.	A. C. Bixby.....	Police Officer.
Thos. Wilson.....	Police Officer.	F. B. Hollis.....	Police Officer.
Wm. T. Hooper.....	Police Officer.	Wm. H. Hanley.....	Police Officer.
C. B. Holbrook.....	Police Officer.	Lucius Little.....	Police Officer.
John Parrotte.....	Police Officer.	A. H. Dempsey.....	Police Officer.
D. W. Boyd.....	Police Officer.	L. M. Bejamin.....	Police Officer.
M. J. Walsh.....	Police Officer.	Ed. T. Leonard.....	Police Officer.
Wm. P. Morehouse.....	Police Officer.	George Birdsall.....	Sergeant of Police.
John G. Maloney.....	Police Officer.	Wm. Tyner.....	Police Officer.
John S. Adams.....	Police Officer.	Thos. F. Norton.....	Police Officer.
Burr Love.....	Police Officer.	W. M. Tilton.....	Police Officer.
S. H. Rankin.....	Police Officer.	John E. Hopkins.....	Police Officer.
N. Berges.....	Police Officer.	James T. Donovan.....	Police Officer.
John Morgan.....	Police Officer.	Ellis Roberts.....	Police Officer.
James Kelly.....	Police Officer.	P. O'Brien.....	Police Officer.
Jno. W. Beckwith.....	Police Officer.	James John Riley.....	Police Officer.
G. B. Griffiths.....	Police Officer.	Martin Lyons.....	Police Officer.
J. M. Dwyer.....	Police Officer.	H. G. White.....	Police Officer.
A. T. Field.....	Police Officer.	Joseph Mier.....	Police Officer.
Wm. L. Cummings.....	Police Officer.	C. C. Wells.....	Police Officer.
E. Hartley.....	Police Officer.	W. D. Scott.....	Police Officer.
Thos. Conway.....	Police Officer.	Wm. J. J. Shaw.....	Police Officer.

John Birmingham.....	Police Officer.	Robert Christie.....	Police Officer.
John M. Floyd.....	Police Officer.	Thos. R. Flinn.....	Police Officer.
George Wittman.....	Police Officer.	D. Conner.....	Police Officer.
J. R. Watkins.....	Police Officer.	James C. McGinnis.....	Police Officer.
William Price.....	Police Officer.	John Beatty.....	Police Officer.
Thos. C. Johnstone.....	Police Officer.	Richard Bidwill.....	Police Officer.
T. J. Duggan.....	Police Officer.	G. A. Anderson.....	Police Officer.
Louis H. Young.....	Police Officer.	Thos. Duff.....	Police Officer.
William H. Scott.....	Police Officer.	Thomas McNulty.....	Police Officer.
William H. Williams.....	Police Officer.	Wm. Byrnes.....	Police Officer.
Patrick S. Hagarty.....	Police Officer.	P. Nash.....	Police Officer.
Patrick Slevin.....	Police Officer.	Thos. H. Bowlen.....	Police Officer.
Nels. S. Field.....	Police Officer.	Thos. Tennis.....	Police Officer.
W. F. Burke.....	Police Officer.	Henry Tenrier.....	Police Officer.
J. J. McLaughlin.....	Police Officer.	W. E. Donnellan.....	Police Officer.
Fred. T. Brown.....	Sergeant of Police.	Jerome J. Hickey.....	Police Officer.
C. Gama.....	Police Officer.	Murty Callinan.....	Police Officer.
G. W. Haggett.....	Police Officer.	M. Michaels.....	Police Officer.
James McGrath.....	Police Officer.	E. R. Eaton.....	Police Officer.
Geo. W. Harman.....	Sergeant of Police.	Wm. H. Wells.....	Police Officer.
William Armstrong.....	Police Officer.	T. A. McKinnon.....	Police Officer.
Frank J. Corrigan.....	Police Officer.	Chas. H. Waterman.....	Police Officer.
John J. Conley.....	Police Officer.	Louis T. Olsen.....	Police Officer.
H. D. Melendy.....	Police Officer.	P. H. Murphy.....	Police Officer.
G. P. Harrington.....	Police Officer.	M. J. Sullivan.....	Police Officer.
Hiram G. Smith.....	Police Officer.	James Kelly, No. 2.....	Police Officer.
John Fanning.....	Police Officer.	Wm. Callinan.....	Police Officer.
Patrick Bradley.....	Police Officer.	T. F. Connolly.....	Police Officer.
Wm. J. Karr.....	Police Officer.	A. M. Cayot.....	Police Officer.
Peter Holland.....	Police Officer.	John C. Ayers.....	Corporal of Police.
Peter Coleman.....	Police Officer.	Thos. Byrne.....	Police Officer.

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PETITION OF CITIZENS OF STANISLAUS COUNTY

URGING THE PASSAGE OF ASSEMBLY BILL NO. 12,

RELATING TO IRRIGATION.

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## PETITION.

*To the honorable the Senate and Assembly of the State of California :*

GENTLEMEN: The undersigned are freeholders in the County of Stanislaus, and are deeply interested in the subject of irrigation. They pray for such action by your honorable body as will provide for a general system by which the waters of the State may be diverted for irrigation and other useful purposes; and, as more fully meeting with our views and desires, we would ask the enactment of the measure introduced by the Hon. C. C. Wright, of Stanislaus County, and known as "Assembly Bill No. 12." The local character of this bill, its recognition of existing rights, and its provision for the equal distribution of the waters, where equal burdens are borne and equal benefits are conferred, renders the system particularly adapted to our wants, and as we believe equally adapted to other localities subject to irrigation. And your petitioners will ever pray.

R. P. Boyd,  
John Servill,  
R. M. Williams,  
Jesse Averill,  
Cyrus Lee,  
M. M. Williams,  
G. B. Hall,  
C. N. Whitmore,  
D. K. Woodbridge,  
George W. Averill,  
G. E. Hill,  
H. A. Starks,  
R. B. Curry,  
C. L. Boothe,  
A. R. Elliott,  
R. K. Whitmore,  
W. Whitney,  
Willett Ware,  
David Webb,  
I. D. Wood,  
J. McNeil,  
G. R. McIntosh,  
L. Resser,  
D. F. Mullin,  
H. P. Wilson,  
H. D. Wallace,  
P. Kane,  
J. H. Haney,  
Theodore Geest,  
Frank McCarty,  
Hubert Dunn,  
Ambrose Marsh,  
Emil Otto,  
E. H. Furgason,  
C. B. Dimick,  
Geo. Mullins,  
Gus. Gerlach,  
T. W. Marsh,  
C. E. Real,  
C. W. Pierce,  
O. C. Pierce,  
H. F. Geer,  
John Gear,  
T. R. Gaddis,

Dan. W. McSwain,  
Levi Carter,  
Thillman Dorman,  
Thomas Hall,  
W. M. Miller,  
Truman Right,  
C. R. McDonald,  
W. H. Arment,  
A. W. McGinnes,  
P. Grenfell,  
W. B. Fugitt,  
Geo. Stevens,  
John E. Cochran,  
P. C. Kaine,  
James O. Carter,  
A. S. Fueketh,  
N. H. Tuggle,  
George Bond,  
J. A. Thompson,  
G. E. Fisher,  
William Gumber,  
E. E. Howard,  
H. Keeton,  
C. F. Haslam,  
J. A. Lang,  
G. P. Ostrom,  
C. H. White,  
Ed. McGowen,  
A. G. Ray,  
Wm. Gladstone,  
P. W. Donnelly,  
James Raveny,  
J. Hamilton,  
D. Morrison,  
D. L. Smith,  
E. H. Willet,  
C. S. Harter,  
Wm. Chadwick,  
W. E. Rogers,  
Geo. Washington,  
Ben. M. Horr,  
John J. Wilson,  
T. E. B. Rice,  
E. S. Waterhouse,

Sam'l Love,  
W. B. Cooper,  
M. D. Norton,  
E. D. McCabe,  
Geo. A. Whitby,  
J. B. Coldwell,  
S. H. Hugs,  
James Johnson,  
Isaac Perkins,  
John Kane,  
A. S. Jones,  
G. W. Rush,  
P. L. Bury,  
J. M. Rusk,  
H. C. Gallagher,  
H. W. Baggs,  
Chas. E. Welch,  
B. Weil,  
Jamison O'Reedy,  
W. A. Downer,  
B. Ducker,  
W. K. Summers,  
R. C. Baileys,  
C. Saladin,  
Speik & Paulsen,  
Fred. Horner,  
Valentine Schneider,  
Leskes & Vagelman,  
Thos. Waterford,  
Ch. Maze, Jr.,  
E. D. McCabe,  
Short & Kane,  
L. Dunning,  
T. B. Jones,  
J. K. Love,  
Ora McHenry,  
E. P. Grant,  
C. C. Bicknell,  
R. C. Minor,  
Abe Arnheim,  
Geo. Perley,  
John F. Tucker,  
L. W. Fulkerth,  
I. C. Brown,

A. Libbey,  
A. Menoth,  
D. J. Allen,  
H. R. McCord,  
I. E. Nathan,  
B. Greenbaum,  
Harry Benton,  
Geo. Buck,  
A. Wilnot Perley,  
A. M. Hill, County Clerk,  
A. J. Spindle,  
Joe Phillips,  
A. L. Dias,  
J. Q. Davis,  
Isaac Ripperdan,  
Chas. R. Teelson,  
J. M. Schaefer,  
Wm. Ash,  
I. E. Gilbert,  
B. Morris,  
F. E. Coulter,  
J. B. Warner,  
A. J. Westrope,  
Frank P. Gomes,  
D. & G. D. Plato,  
Philip Elias,  
A. T. Miner,  
S. Fairchild,  
Merjen & Latz,  
W. S. Rosecrans,  
W. A. Doukin,  
E. H. Bledsoe,  
Wm. Grant,  
A. D. Willis,  
W. R. Langworthy,  
J. P. Allen,  
G. T. Munson,  
C. N. Tharsing,  
C. E. Cunningham,  
J. R. Neuman,  
H. H. Burrell,  
H. L. Bradford,  
B. Moulton,  
L. Baldwin,  
D. D. Vezey,  
A. F. Fuquay,  
John B. Brickman,  
M. B. Kittrell,  
J. R. Looney,  
Ira M. Rouce,  
R. B. Purvis,  
J. S. Grainger,  
J. C. Henderson,  
W. Brown,  
J. Ewerts,  
R. D. Young,  
E. M. Stripling,  
D. W. B. Haek, Jr.,  
O. Fitzpatrick,  
C. H. Blodgett,  
H. C. Russell,  
W. H. Mohony,  
E. H. Wagen,  
L. W. Winans,  
H. Christ,  
O. Zimdart,  
Jack Kane,  
C. W. Easton,  
I. C. Melton,  
W. H. Vivian,  
S. F. De Yoe,  
J. D. Harp,  
Wm. P. Crow,  
Frank Crispin,  
C. A. Stonesifer,

Joseph Vincent,  
William Young,  
J. R. Broughton,  
John Fox,  
Frank Aleressey,  
C. E. Sperry,  
P. H. Medley,  
O'Larry, Patrick,  
S. B. Bailey,  
Thomas Wallace,  
L. N. Grumbly,  
J. Dettlebach,  
John Robinson,  
E. Dettlebach,  
A. C. Bilick,  
E. Meinecke,  
O. L. Wakefield,  
Geo. W. Boggs,  
Schafe & Post,  
C. A. Post,  
C. Hammeltnberg,  
Jas. M. Schafe,  
A. B. Gridley,  
W. B. Rice,  
J. C. Semple,  
W. H. Alexander,  
J. W. Beatty,  
N. F. Howell,  
J. W. Derison,  
W. W. Granger,  
A. Estes,  
S. J. Allen,  
J. Bond,  
R. R. Lander,  
R. T. Wilhite,  
H. B. Waters,  
P. McGrath,  
James H. Parker,  
John J. Case,  
B. A. Trapp,  
A. J. Morgan,  
P. G. Nolan,  
C. F. Lander,  
J. B. Looney,  
M. A. Fuller,  
E. McCabe,  
S. M. Mitchell,  
H. W. Orton,  
Jay E. Fuller,  
H. H. Clark,  
W. L. Canfield,  
M. J. Ryan,  
W. A. Harter,  
J. S. Loventhal,  
Samuel M. McLain, M. D.,  
C. W. Evans, M. D.,  
J. J. Stoddard,  
H. A. Anderson,  
Garrison Turner,  
Henry G. Turner,  
J. S. Alexander,  
Judson Johnson,  
L. F. Mallory,  
L. J. Madden,  
C. H. Jones,  
F. F. Harwick,  
S. Strauss,  
Max Strauss,  
H. Nelson,  
C. G. Samuels, Jr.,  
Chas. Davis,  
W. L. Fulkerth,  
N. D. Nevin,  
J. P. Young,  
Thomas W. Lee,

M. Joyce,  
C. A. Worth,  
W. C. Powell,  
D. Anderson,  
F. Goodroe,  
J. E. Ish,  
J. M. Pearson,  
N. Kinkad,  
F. C. Clark,  
C. A. Hale,  
Frank Owen,  
T. A. Elliott,  
Geo. Irish,  
C. E. Marriott,  
S. Greenleaf,  
C. Bond,  
J. W. Tulloch,  
C. S. Abbott,  
W. A. Jackson,  
J. A. Lewis,  
G. Trammell,  
W. S. Stone,  
O. H. Muncy,  
William McNeal,  
E. Shoenke,  
James Thompson,  
Robert Dallas,  
M. B. Carter,  
W. L. Muncy,  
E. W. Bursh,  
P. O'Connell,  
G. W. Mitchell,  
A. M. Daley,  
L. D. Davis,  
A. P. Elmore,  
D. C. Coleman,  
G. H. Pipkin,  
G. Dulin,  
W. B. Williams,  
A. B. Hill,  
Wm. Dallas,  
J. M. Shafe,  
Sam Dollarhide,  
Joseph Marshall,  
E. Holmes,  
F. E. McCaffrey,  
G. B. Douglass,  
J. Cunan,  
J. P. Fuller,  
M. B. Wakefield,  
L. B. Walthall,  
J. M. Scott,  
H. H. Russell,  
J. R. Hayden,  
C. G. Whallon,  
C. Saladin,  
John H. Howell,  
J. E. Robinson,  
J. A. Mullins,  
B. Henert,  
A. E. Elliott,  
John Kane,  
A. Merahamgan,  
Louis Day,  
D. S. Husband,  
S. B. Harp,  
Charles L. Brandt,  
J. Furry,  
S. P. Derby,  
N. L. Tomlinson,  
W. W. Adams,  
G. Hammeltnberg,  
Andrew McKee,  
Fred. Jacobsen,  
M. F. Enoss,

John Cadrett,  
M. Moyle,  
C. Boepple,  
Antonio Pereira,  
John Pereira,  
F. S. Kurr,  
W. H. Ervin,  
C. Logan,  
Henry Williams,  
J. B. Simon,  
Joe. Davis,  
J. I. Jones,  
Wm. Jackson,  
H. R. Hendee,  
John W. Loudenbeck,  
B. B. Hanscom,  
J. S. Wootten,  
L. E. Thornburg,  
Felix Anaya,  
T. E. Price,  
J. H. Maddrill,

J. C. Gur,  
G. W. Oman,  
Geo. Nicholas,  
Wm. Donnelly,  
P. T. Davis,  
J. R. Springsteen,  
Geo. Springsteen,  
D. G. Kerr,  
G. D. Wootten,  
Wm. Gabel,  
Julien Mourrot,  
J. C. Laughlin,  
T. A. Caldwell,  
C. P. Adie,  
E. B. Beard,  
Wm. C. Shear,  
W. H. Thornburg,  
T. D. Harp, J. P.,  
W. F. Wallis,  
Geo. W. Booghaman,  
James Hamilton,

Steve. Girard,  
Miner Walden,  
S. R. Clayes,  
W. K. McMullin,  
Gus. Lewis,  
W. S. Chase,  
F. B. Moody,  
Chas. S. Whitmarsh,  
S. E. Foster,  
M. Estes,  
F. M. Baker,  
W. W. Endicott,  
J. D. Arana,  
G. W. Hanson,  
S. H. Crane,  
T. H. Fulkerth,  
G. T. Davis,  
J. T. Weakley,  
Henry Bowser,  
Jas. R. Berry,  
Raymond J. Decussan.



RECOMMENDATIONS

RELATIVE TO

REGISTRATION OF VOTERS.

By

P. F. WALSH, REGISTRAR OF VOTERS,

*SAN FRANCISCO.*



SACRAMENTO:

STATE OFFICE, ..... JAMES J. AYERS, SUPT. STATE PRINTING.

1886.

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## RECOMMENDATIONS RELATIVE TO REGISTRATION OF VOTERS.

*To his Excellency GEORGE STONEMAN, Governor of California:*

SIR: I have the honor to submit the following in reply to a circular letter from your Private Secretary, Col. J. J. Tobin, requesting me to send any suggestions or recommendations relative to this office.

The Precinct Registration and Election laws applicable to this city and county have hitherto been held in such general favor that—as has been the custom of my predecessors—I have refrained from making any suggestions of changes in the reports that I have made to the honorable Board of Supervisors.

Of late, however, the subject has been receiving considerable attention from the Board of Freeholders, now preparing a charter for this city and county, as well as from a portion of the press, and citizens and officials familiar with those matters. Several changes have been suggested, but so far, nothing has been presented that is generally acceptable.

In a matter as complex as Registration and Elections, it is not to be wondered at, if a variety of opinions are manifested in any effort to make them complete, reliable, and secure.

The Hon. George W. McCreary, who has given the subject much thought, has recommended certain essentials necessary to those desirable ends. In his learned and comprehensive treatise on the "American Law of Elections," he says:

"That every efficient election law must, among other things, provide:

"*First*—For small voting precincts.

"*Second*—That an elector shall vote only in the precinct of his residence.

"*Third*—For representation of all parties on Boards of Election and Registration.

"*Fourth*—For complete registration, especially in cities, and only persons registered to be allowed to vote.

"*Fifth*—For the presence with the officers of election, at all stages of the proceedings, of witnesses representing the parties in interest.

"*Sixth*—For a canvass of the vote immediately upon the close of the polls, and without adjournment or separation of the Board.

"*Seventh*—For the prevention of violence and intimidation.

"*Eighth*—For the prohibition of the use of tissue ballots and kindred fraudulent devices."

Now our present law, fairly and impartially administered, provides for each of these essentials.

What then are the objections to it?

I shall endeavor to present them, or at least those that have come to my knowledge, as briefly as possible:

First—It is objected that there are two systems of registration, when either one would be sufficient.

Second—That our system is too expensive.

Third—That our plan of selecting election officers is not as specific as it should be.

Fourth—That the law in regard to the selection of polling places is not obligatory enough to secure ample and necessary accommodations.

Fifth—That the manner of counting and canvassing the votes, presents opportunities that might, by a different system be prevented, for fraudulent conduct, and makes the time of the complete declaration of the results too prolonged.

Our present law, as you are aware, provides for two methods of registration at the elector's choice, one at the registration office, now known as "Central Registration," which commences ninety days before election and continues for seventy days, when registration in each precinct opens, lasting five days.

Many persons hold that one of these should be dispensed with; some favor the central plan, others the precinct. Both have their advantages. The central is advantageous for those whose business obliges them to leave the city before and be absent during the time of precinct registration, which in San Francisco is a very large number. Continuing for over two months at a central point, electors avail themselves of its opportunities at their convenience.

The following is the number registered at the central office and in the precincts in each of the two last registrations:

1884.—Central, 29,948; Precinct, 20,859.	Total.....	50,807
1886.—Central, 26,342; Precinct, 22,707.	Total.....	49,049

For naturalized citizens who have not the data of their naturalization at hand, it can be obtained at the central office with comparatively little trouble at the time they go to register.

The principal advantage of precinct registration is, that it is more convenient for those living remote from the central office—an important consideration. It is also held, that fraud can be better prevented there than by central registration; this is, however, a disputed point.

From this double system arises much of the expense objected to. By the adoption of either plan, a large saving could be made, the gain being in favor of the central plan.

Under our present system, and particularly under the precinct alone, an additional expense could be avoided if the present usage of having the elector's application made out on separate blanks, signed with the signature of the applicant, from which it is subsequently copied into the Precinct Register and finally filed, was abandoned; and instead, have the application at once written into the register and therein be signed by the applicant, as is the custom in New York and other eastern cities.

Another large source of outlay is the printing of Precinct Registers, which, this election, cost \$9,386 30, at 19½ cents per name (said price being below the average for such work).

We print 125 copies of each precinct, giving in each case the entire record of each registration. These are distributed free.

In New York City only the written Registers are used, each of the four members of the Board of Precinct Registration being obliged to make a copy, and none, I am informed, were printed until 1881, since which time they are printed as an appendix to the "City Record," in Assembly Districts, and sold at five cents a copy. In these only the residence and names are given.

In the city of Brooklyn a somewhat similar abridgment is printed and distributed free.

The reason urged in behalf of the painstaking and expensive manner

in which our registration is done, and the Registers printed, is that the cost is but a secondary consideration in comparison with the end of having a thorough and complete registration, as well as an available and efficient means afforded all parties interested, to scrutinize the same and have eliminated therefrom, or marked for challenge, all of whose right to vote there may be found sufficient reason to question.

If the law is not radically changed, I would suggest that at least one day be allowed between the closing of central registration and the opening of precinct registration, to allow for the transfer of books, and a longer time for the printing of the Registers than is now allowed by law.

The largest expense of our system is the pay of precinct registration and election officers—which amounted in the last election to \$38,735.

If any change is deemed necessary by you in that, I would suggest that it be made more uniform. I see no good reason why five or eight dollars per diem should be paid registration officers and only two dollars to officers of election. By paying an officer five (5) dollars per diem for registration and election, and limiting the former to five days, and the latter not to exceed three, the aggregate would be less under the present rates, and the apportionment would, in my judgment, be more equitable.

The next largest expenditure of elections is for advertising, being, for 1886, \$5,814 05; but as this is done for the information of electors, and to a large extent is under the control of the Board of Election Commissioners, no other legislation than exists may be deemed necessary in this particular.

The following gives the expense of registration and election since the organization of the Board of Election Commissioners as per Act of March 18, 1878, as shown by the Auditor's and Registrar's reports:

From March 25, to June 3, 1878.....	*\$53,007 64
For 1878-79.....	56,114 19
For 1879-80.....	104,563 87
For 1880-81.....	108,106 28
For 1881-82.....	33,366 67
For 1882-83.....	94,721 46
For 1883-84.....	9,218 25
For 1884-85.....	86,059 28
For 1885-86.....	6,641 50
For 1886 to Dec. 20th.....	78,836 49

\*The total for 1877-8 was \$132,169 25.

In regard to the selection of precinct and election officers, Sections 11 and 12 of the present Act could be amended to advantage, so as to secure names to select from, and just political representation on the Boards.

In respect to polling places, one of the greatest difficulties of this office is to obtain suitable quarters in thickly populated districts, and also in precincts where the buildings are principally private residences. In the former every available place is occupied by stores which could scarcely be had, even at exorbitant rents, and in the latter, the occupants would not have a polling place in their premises at any price. Contracted and dingy places are most objectionable, and, as a rule, are only retained when better cannot be had.

It may not be amiss to remark here, that the precincts in which the recounts that have been held indicate that some of the election officers must have been parties to the discrepancies discovered, were among the most convenient and best lighted polling places that we had.

It has been suggested that in certain localities a part of the public school houses might be used. As this would necessitate three or four days' vacation at an inconvenient time, it is not likely to meet with popular approval.



The custom of having the ballot box at a window or door opening on the street makes it an additional difficulty in obtaining polling places. In other cities the ballot boxes are placed within a building, to which the public have always clear and free access. The adoption of this practice here, in cases where other places cannot be had, would assist very much in overcoming the objection mentioned.

The desire most generally expressed at the present time is the adoption of a system for polling and canvassing the ballots and returns that would shorten the time of obtaining the result. Several plans have been suggested. One is to count the ballots hourly. The objection to this is that it would indicate how the election was progressing, and afford opportunities for corruption to those disposed to traffic in the franchise. Another is to have the ballots brought to some central point and be there counted. To this plan it is objected that it would afford an opportunity to tamper with the ballots in transit. Upon this McCreary says:

"There is another mode of cheating which demands attention, and should be guarded against by legislation, and that is tampering with the ballots after they are cast and before they are counted. \* \* \* The only remedy is to require the votes to be counted immediately after the closing of the polls, and to strictly forbid the separation or adjournment of the Board until the count is completed and the returns signed."

In addition to the foregoing, it does not seem to have been satisfactorily shown how the canvass could be by this plan facilitated, even if a sufficiently commodious, securely lighted, and protected building could be obtained. The system of having a number of separate ballot-boxes and tickets, as now adopted in New York City, is also recommended. The increase of ballot-boxes and tickets would not improve our system unless we adopted a different method of canvassing the ballots than we now have; but would, on the contrary, increase the number of tickets to be opened, counted, and canvassed. True, it would tell sooner how the first candidates whose votes had been deposited in the first numbered boxes had been voted for, but it would greatly lengthen out the time when it would be ascertained how those voted for in the last numbered boxes fared.

It has been suggested that it would improve our present system if the law was amended so that the so called straight tickets of each party could be arranged in separate lots, and called off by fives or tens. This appears as though it might afford some economy of time where scratching did not prevail as much as in our last election; notwithstanding that there were some sixteen separate tickets in the field, my observations during the present recount of several hundred tickets that passed through the callers' hands, was that the average of unscratched tickets of all parties combined was but fifteen per cent.

Several other places have been suggested, but I regard them as secondary in merit to any of those already mentioned, with the exception of the system now used in New York City, which is reliably credited with being the most advanced, secure from tampering, and expeditious of any in practical use. Its adoption to our use I would submit as worthy of investigation.

For our own system, I will say in conclusion, that it has passed through several crucial tests with credit. Caution, I submit, suggests itself in contemplating any radical change in such a law.

Respectfully submitted.

P. F. WALSH,  
Registrar of Voters.

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ARGUMENT OF PETER ROBERTS,

DELIVERED

Before the Assembly Committee on Labor and Capital,

ON

ASSEMBLY BILL NO. 13.

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## ARGUMENT.

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In dealing with the question of the management of prisons, the legislative power and the authorities of various countries have been guided by the most diverse purposes, and it is the experience of all that there has been no system yet devised that can even approximate perfection. In most civilized countries the purpose of the enforced privation of the convict's liberty for public protection, and as a punishment for his crime, has been supplemented by various well-meant efforts looking to his final moral reformation; and the observation of the honest and truthful investigator concedes the complete failure of any and every system of discipline which has had the latter object. We think it cannot be denied that, as reformatories, prisons are, and in the nature of things must be, failures.

The fact that one or two in a hundred of discharged convicts may give indications of permanent reformation is very much weakened by the reflection that probably ten per cent of the inmates of prisons do not belong to the criminal class properly, but are punished for crimes which are rather the result of sudden impulse than of premeditated violation of law. However, one of the prime factors in securing criminal reformation is acknowledged to be constant and regular employment, and to supply that many of the prisons are furnished with facilities for various varieties of manufacture; and it is in connection with machinery that prison labor is in this country most extensively used. This is evidently because the productions of hand labor in this lightning age would scarcely buy the prison salt; and every well regulated Prison Director or Superintendent is anxious to make a reputation by directing or controlling a prison that is as nearly as possible self-sustaining.

In all the windy ways that discussion on this topic has been carried on, the one idea kept prominently in mind has been to save the State from expense, not in the sense of conserving the industrious thousands and hundreds of thousands of manual workers, whose well-being is the absolute foundation of social health and progress, but to abate, by a cent or two in a hundred dollars, the tax rate upon the rate payers, even though destruction should result to the honest enterprises of the free laborer; and the agitation against convict competition, though old as the system itself, is only lately lifted into the public eye through the revelations of labor bureaus, and other means of official investigation. It is a fact, which has been shown over and over again, so often that to those familiar with it its reiteration has become tiresome, that convict production in any line of industry tends to degrade wages, and to finally destroy the free labor therein engaged.

To bring this matter directly to your consciousness, let us take the operation of a sash, door, and blind plant, such as that at San Quentin, as an illustration. Let us suppose that it produces but twenty-five per cent of the total output of goods of that kind used each year in the State—and it is averred that for some months it produced more than fifty per

cent of all the goods of that character used in this State—(report of Bureau of Labor Statistics of California, 1883-4, p. 162); it is in evidence that that per cent has so depressed the business that the remainder is produced at almost starvation wages to the workmen, and the most meager profit to the manufacturer.

Now, the State cannot afford to look at one side of this prison labor question without also considering the other. It cannot be so busied about the cure of criminals and malefactors as to forget its duties to those who have violated no law. It may be merciful, but it must be just; and in trying to make honest men out of criminals at one end of its dilemma, it should avoid making criminals out of honest men at the other. When the new Constitution was adopted, the people had clear intentions when they enacted that "the labor of convicts shall not be let out by contract to any person, copartnership, company, or corporation, and the Legislature shall provide by law for the working of the convicts for the benefit of the State." (Constitution, Article X, Section 6.) They had in mind the protests which were universal in all the manufacturing districts throughout the land, against the senseless and ruinous competition of prisons with free labor, which will be continued wherever the evil exists. This is shown beyond cavil by a reference to contemporary utterances of public men. Governor Perkins, in his inaugural, 1880, uses the following language:

By a wise provision of the new Constitution the State penal institutions are to be placed under the sole control of a Board of Prison Commissioners, appointed by the Executive. After January first the Constitution prohibits the contracting of prison labor. \* \* \* We cannot too early turn our earnest attention to a consideration of the uses that can be advantageously made of prison labor so as not to conflict with and degrade the free labor of the State.

A Commission to inquire into the administration of the State Prisons, appointed by Governor Perkins, says:

The provision of the new Constitution \* \* \* created an exigency in the prison management of the State not easily met. \* \* \* A strong popular spirit of opposition existed to the employment of convict labor in such lines as would compete with the established industries of the State.—Report August 25, 1881, p. 22.

Chancellor Hartson says:

The State should carry on its own prison industries so that it can supply continuous work, so that it can establish such industries as are least in competition with the established industries in the State.—1881. Report of the Assembly Committee on Prisons, p. 6.

The Prison Directors of that day report to the Governor:

The radical change effected in the industrial interests of the prison had its origin, no doubt, in the belief that cheap prison labor came in direct and ruinous competition with free mechanical labor of the State. \* \* \* The Board proposes to select such industries as shall \* \* \* interfere as little as possible with free mechanical labor.—Report of Prison Directors, 1880, p. 6.

The Board further says, on page nine, that they established the jute mill "*especially because of its non-competition with free white labor*, and of the unqualified indorsement of farmers and other business men of the State," and on the following page (ten): "We hope that in time we will be able to profitably employ all our prisoners in the manufacture of such articles as are not made on this coast by free white labor."

The report of the Prison Directors in 1882 says:

We have kept steadily in view the advisability of manufacturing such articles as would not in any way bring prison labor in competition with the free labor of the State. This was one

of the chief reasons for establishing the jute factory, as also for converting the furniture factory, formerly worked by N. P. Cole, into a chair factory, there being \$500,000 worth of chairs imported into the State yearly, many of them made in the Eastern prisons, and not a chair factory on this coast.—Page 5.

And they repeat, page thirteen:

It has been the desire of this Board to employ convict labor in the manufacture of such articles only as are not manufactured on this coast by free white labor.

This should certainly suffice to show the motive for the constitutional enactment and the legislative Act of 1880, and is certainly conclusive as to their purpose, as it was understood by the prison authorities of that period, but we cannot refrain from quoting a part of Warden Ames' report in 1883. He says:

The principal industrial department is the jute factory. It is now a pronounced and acknowledged success. It is beneficial in every way, and injurious in none, to the convicts at work, as well as to all the citizens of California. The products of its looms rank the highest in the market, and are in demand beyond the capacity of its hundredfold power. If the factory space were enlarged so that every able-bodied prisoner was employed therein, and those at the Folsom Prison were included also, not an ounce of manufactured jute, in any of its forms, would remain unsold for want of a profitable market. When it is taken into account that the operations of the factory directly protect and benefit our great industry of farming, that they do not conflict either with free labor or the products of it, in any form, and that they antagonize only the importing capitalist, if anybody, the triumph of the project is fully emphasized.—Report of Prison Directors, 1883, pp. 11 and 12.

In view of the above, the members of the twenty-seventh session of the Legislature will probably be surprised to learn that during all this time, and now, the operations of the prisons are conducted without any regard to the main consideration, above set forth. Indeed, proceedings were instituted before Governor Stoneman in May, 1886, by the Attorney-General, in behalf of the people of the State, to procure the dismissal of the Board of Prison Directors, for persistent violation of the fundamental law, based upon charges made by a committee on convict labor of the Federated Trades Council of the City of San Francisco. The investigation, what there was of it, was begun and concluded on Saturday, May fifteenth, of that year. During its progress, evidence was offered to show the effect of prison competition upon the quarrying and dressing of stone, but was objected to by Mr. Devlin, one of the Directors concerned, who maintained that:

The Directors had nothing to do with the effect of the prison labor upon private industry; that it was their duty to earn what they could by the labor of the prisoners, whether it injured free labor or not; that they sold the product of prison labor for the highest price they could obtain for it, and that under these circumstances evidence as to the effect of prison competition upon free labor was not competent.—Report of Convict Labor Committee to Federated Trades, May 17, 1886.

Mr. Baggett, for the people, replied:

That if the English language meant anything, the section (constitutional) prohibited this competition; that the words employed could have been used with no other intent, and that the necessity for such a law was made manifest by the present proceedings, where the representatives of all the leading industries of the State were before this tribunal protesting against this very competition as a prostitution of the power of the State, and an incalculable injury to its industrial interests.—Ibid.

The Court admitted the evidence, subject to the objection urged by Devlin, and said that it would exercise its discretion whether or not it should be considered. This evidence will be referred to later, and will

receive at your hands the attention it deserves. It should be mentioned that Mr. Devlin, for the Directors, denied persistently that there were any contracts between the prison authorities and buyers; but the Governor, in announcing his decision to the committee, said:

That he had decided to instruct the Directors to give thirty days' notice to the contractors of the termination of their contracts with the prisons, and that at the expiration of that time the operation of the prisons in competition with free labor would cease.—Report of Convict Labor Comm. to Fed. Trades, June 11, 1886.

In this connection, we will call your attention to a remarkable circumstance in the prison management which should settle beyond doubt the conclusion that under the present system the prisoners in certain departments are as thoroughly under private control as any private enterprise. In the seventh annual report of the Board of Prison Directors, for the year ending June 30, 1886, pages seventeen and eighteen, Warden Shirley reports:

The sash, door, and blind department has been operated on the same plan as last year. \* \* \* *The State furnishes the motive power, and both the free and convict labor, and manufactures at a stipulated price per piece, but the State does not own the machinery or the raw materials, nor has the State any interest in the output. The large stock of manufactured goods on hand, and the limited sales during the winter and spring, induced your honorable Board, at the request of the sash, door, and blind company, to make a reduction of forty per cent of the average output of the factory. This reduced the net earnings of this department \$7,981 86, as compared with the previous year.*

And he further says, that as appropriations are gauged by the previous earnings, "such shrinkage in the income from the manufacturing department becomes exceedingly embarrassing to the administration when such large sums are lost to the fund for the support of this institution." Thus it appears that the prison is run to suit the convenience of the California Door Company; that men are put on or taken off at its pleasure, and that this shuttlecock policy cost the State last year \$7,981 86. In the face of this report, what becomes of the pretense of the Directors that the contract system is not fully restored.

Director Devlin has asserted, in course of investigation before Governor Stoneman, that the State is ready to sell to anybody. How can that be possible, under such a state of affairs as are disclosed in the above official report? The California Door Company owns the raw material and all the machinery, the State only furnishing power and labor. Will the company allow the Directors to use its machinery in manufacturing goods for a business rival, or will the State allow another company to put up machinery of the same kind in the prison grounds and furnish them with like buildings and appliances as are used by the California Door Company? It is not likely. Will the Directors deny that at a recent meeting in San Quentin, during the present month of January, the Warden presented a request from this same California Door Company to increase the working force in the sash, door, and blind mill fifty per cent, and that he reported that this increase could not be furnished without taking the larger portion of the prisoners from the jute mill, which will materially reduce the output and increase the cost of manufactured goods in that department? Did not Director Sonntag admit, at the same meeting, that there were five or six looms idle at that time in the jute department? Is it not time for the State to take this matter in charge, tell the California Door Company to take out its machinery, and begin a settled policy of operation, which shall be simple, easily directed, and certain in its results; manufacture jute goods, and those only, thus taking it out of the power of

three or four men, who are impervious to criticism, and seem unattainable by investigation, to paralyze important private industries, and at the same time use the resources of the State in the interest of an obscure monopoly, and at the expense of the State Treasury?

The quarterly reports of each prison to the Controller of the State also show that the sales of sash, doors, and blinds from San Quentin are invariably made to the California Door Company, and those of furniture to the California Furniture Company, while the only recent reports that we have been able to find in the Controller's office from Folsom Prison, show that, without exception, every order filled in San Francisco was paid for by one man. We believe that in consequence of the decision of Governor Stoneman, the continued output from Folsom has ceased, but everything points us to the conviction that operations at San Quentin are carried on as before, and that that institution has not been affected by the Governor's instructions as stated above. That convict competition with free labor even to a very limited extent, is followed by disastrous consequences to industrial interests has been fully settled, and we challenge the fullest investigation in this behalf in this or any other community. We call your attention briefly to testimony given in this State, all of it under oath and before public officers. In relation to leather, harness, and saddlery, Patrick F. Robinson testified before Labor Commissioner Enos:

That he has worked at the business of collar and harness maker twenty-eight years. That convict labor is bad for the harness business in California, in my opinion. For Boston team collars was paid fifteen dollars per dozen in the East. I believe they make them here with convict labor for five dollars a dozen, or even less. Ninety prisoners working on collars would supply the collar market of California.

William Davis, a saddler doing business in San Francisco seven years, testified:

Competition with convict labor in my business has compelled me to discharge men and employ boys, or else Chinamen, and has lessened the price of mechanics' wages from twenty to twenty-five per cent.

Cal. Ewing, a collar maker of San Francisco, testified:

Am now foreman in Main & Winchester's, one of the largest manufactories of harness and collars in the State of California. The employment of convict labor in our business has cut down wages forty per cent. Mechanics cannot live and support their families and compete with convict labor.

Malachi Kean, foreman of the saddle and harness department in Main & Winchester's for eighteen years, testified:

Convict labor has depreciated the price of collars thirty or forty per cent.

James R. Brown resides in Benicia, tanner, employs between thirty and forty men, testifies:

Convict labor employed in tanning leather interferes with our business, and cuts the prices down from thirty-three to fifty per cent.

William Cosby, doing business in San Francisco for twenty-one years, testifies:

I was compelled to abandon the making of collars, owing to the competition of Chinese and convict labor.—Labor Commissioner's Report, 1883 and 1884, pp. 147, 148, 149, 150.

Henry Rieke, a cabinet-maker for twenty-one years, testified:

The competition of convict labor with the mechanics and industries of the State is detrimental. It has reduced the price of free labor about one half.

L. C. Grampner, Red Bluff, California, manufacturer of sash, doors, and blinds, testifies:

The effect of convict labor gives the State or contractor such an advantage as to crush out private enterprise. I think the present action of the State Board of Prison Directors is fully as detrimental to free labor as obtained under the past system of the old Constitution. There is no difference.—*Ibid*, pp. 154, 155.

The Labor Commissioner tried, without effect, to get the list of prices paid by the firm who took the prison output of sash, doors, and blinds. The Warden refused it, and the interested firm refused it. He succeeded in obtaining it from a private firm, one of the largest manufacturing companies in the State, by letter, as follows:

Regarding the disadvantageous relation occupied by manufacturers employing free, white, skilled labor in competition with convict labor, producing the same articles at California State Prison, the situation can best be illustrated by a statement showing the operations of a single month, and comparing same with the cost of a similar output, manufactured by free white labor, men and boys, outside the prison walls. For example, take the ascertained monthly result in the case of the California Door Company, occupying nearly one half the prison shops and manufacturing facilities. The State furnishes a brick building 60 by 200 feet, four stories, with power, shafting, elevators, etc.; also space for piling lumber, drying kilns, and heating facilities. For the month of June the articles turned out, at prices opposite each item, were very nearly as follows:

11,500 doors, all kinds, average 24 cents .....	\$2,760 00
8,000 pairs 1½ and 1¾ sashes, average 13 cents .....	1,040 00
1,500 pairs outside blinds, 25 cents .....	375 00
750 sets inside blinds, 75 cents .....	562 50
1,000 transoms, 5 cents .....	50 00

Total .....	\$4,787 50
State paid for supervising free labor, say .....	1,300 00

Leaving net amount received per month .....	\$3,487 00
Out of this take for rent of land occupied by lumber, rent of these immense shops, cost of power, wear and tear, etc., a low estimate would be, per month..	700 00

Leaving to the State for convict labor .....	\$2,787 50
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Number of convicts employed, estimated on a pro rata basis of other months, would be 295, the amount received by State per convict per day for twenty-six working days being less than 38 cents each. When it is considered that the State maintains these prisoners at an alleged cost of 44 cents each per day, the money result above shown seems grossly inadequate. \* \* \* No comparison can be made with any factory as large in this State, as none could exist while this remains. It may be safely estimated that the payroll of a similar establishment, working free white men and boys, and making the same monthly output, would be at least three and a half times (for the same work) the amount received by the State for convict labor boarded and clothed by the State. Regarding a statement of Warden Shirley, made last April, before the Honorable Commissioner of California Bureau of Labor Statistics, that "State Prison productions of doors, sash, and blinds was less than one per cent of home consumption," it was then more than one third, and has for several months been more than one half of all the factory products of that line of goods within the State of California."—Report Bureau of Labor Statistics of California, 1883, 1884, pp. 161, 162.

These are but meager quotations from the evidence that has been taken in this State alone in relation to the pernicious effects of prison labor, and refer only to San Quentin. We will confine ourselves to one or two extracts from the evidence in relation to the operation of Folsom Prison in closing this part of the subject.

At the investigation before the Governor, May 15, 1886, already referred to, G. Griffith, being sworn, testifies:

I reside in Penryn; am a practical stonecutter. The prison advertises crosswalks, at 35 cents and curbing at 45 cents per linear foot. The same stone cannot be furnished by free labor at less than \$1 00 per linear foot. That is the lowest price. The market price has ranged from 90 cents to \$1 25 per linear foot.

Cross-examined by Devlin:

I sell for a dollar when I can; I can't sell any now. I have sold crosswalk in Sacramento at 50 cents per foot, but it was narrow. Q. "Do you know the market price?" A. "There is no market price; the prison makes the price. My sales the past year ranged from \$40,000 to \$50,000. I am injured, and can't employ so many men. It would be difficult for a quarryman to run out a competitor who got his tools and labor for nothing."

J. L. Grant, sworn:

I reside at Rocklin; have been a practical stonecutter for twenty-eight years; have lived at Rocklin for twenty years. Previous to the past four years [when the prison at Folsom was established] there have been from three to four hundred men employed in the stone business; now they are nearly all gone away, and of those who remain many had built houses and had families. Business has been so depressed that many of them can't raise money enough to pay their taxes. Since the Prison (at Folsom) started in the stone business the men have frequently been compelled to work at the plow and in the fields at 75 cents per day, instead of at their trade for from \$3 50 to \$4 00. There is no market price for stone. The prison never got more than from fifty to sixty per cent of the lowest price at which it could be furnished by free labor. As an instance, the prison furnished the cut stone for a church in Galt for \$400. I made an estimate of what it was worth, and it couldn't be done less than \$1,100 by free labor. I know by figuring on Sacramento work that the prison figures fifty to sixty per cent of market prices. Wages of good quarrymen four years ago were \$2 50 to \$2 75 per day, stonecutters \$3 00 to \$4 00 per day. The number of men is diminished over one half, and those are seeking work at anything. I know that Mr. Griffith hasn't more than one fifth of the men he used to have. Under the present system the free man has no chance at all. In my opinion the State is running the quarries at a loss.

Cross-examined by Devlin:

I am not owner of a quarry; \* \* \* am working at present for John Taylor. As long as the prison is in the market free labor is crushed out altogether.

Patrick McGreal, sworn:

Am a stonecutter; reside in San Francisco \* \* \* The material sold in San Francisco (from the prison) is sold at half the market price. On a job in San José Owen & Blanchard put in a bid for \$2,100. The prison did the work for \$900.—Report of Convict Labor Committee to Federated Trades, May 17, 1886.

Thus the contract system has been perpetuated in spite of constitutional and legislative inhibition, but instead of selling the labor of the convict, the Directors have sold the product of the convict's labor by contract, for it could have been done in no other way, and at any rate the result has been the same, for there is neither a distinction nor a difference in contracting for a day's labor of a man, or for the product of that labor. They have called it the "piece plan." (See Report of State Prison Directors for year ending June 30, 1885, p. 11.) The Warden of San Quentin reports that the sash, door, and blind department is operated "by the manufacture at a stipulated price per piece, *private individuals owning the plant*, and the State furnishing power and labor." Furniture department, "by the manufacture at a stipulated price per piece, *private individuals supplying all the materials*, and the State owning the plant and supplying power and labor." Tannery and harness department, "by the manufacture at a stipulated price per piece, *private individuals supplying all raw materials*



and the movable plant, and the State supplying the permanent plant, the power, and labor." As we have said, it is in effect the old system of convict contract labor, and as disastrous in its consequences as ever.

We naturally come to the question, What is the duty of the State in the premises? Undoubtedly, to put an end to such a state of things at once and forever. It is, unquestionably, a primary duty of the State to throw no obstacle in the way of productive effort. If a bill should be introduced into this Legislature to interdict the operation of sash, door, and blind, furniture, harness, and collar, or other factories, or of granite quarries or stone yards, unless the product be sold at a price to be fixed by the Act, and that so low that the business could only be operated at a loss, it would meet with universal and unanimous opposition by members of all parties; yet this is, in effect, precisely what the State is doing, and will continue to do, unless you take some action. The remedy is so easy, so entirely in your power, that there can be no excuse offered for further delay. We have already quoted the opinion of Warden Ames, fourth report Prison Directors, 1883, that if the entire prison force were increased one hundredfold, and applied to the manufacture of jute goods, a profitable market could be found for the product.

In the report of 1886, the Prison Directors remark:

Another mill of equal capacity would absorb the entire force not engaged in the domestic affairs of the prison or physically disabled.

After discussing the cost of the same, the report continues:

The question of how to employ convict labor at San Quentin would be settled definitely, and forever. At the same time the farmers of the State would receive additional protection against the operations of grain bag manipulators. The refusal of this Board to have any connection with the ring that endeavored last Spring to make a corner on bags, and so extort hundreds of thousands of dollars from the productive industries of California, was one of the principal causes of the overthrow of that combination.—Page 9.

And this quotation suggests that the constant output of the State sack manufactory, in addition to the certainty of financial success, will save to the farmers and producers, in a few years, millions of dollars, in the prevention of combinations or corners by sack dealers, for the plunder of an ever increasing market.

Warden Paul Shirley says:

In this connection, I would respectfully suggest, and earnestly recommend, that an appropriation be asked for an additional jute plant, and in support of this recommendation I would say, it is my opinion that the convicts are more contented, less troublesome, and under better discipline and control while employed with the spindle and loom, than in any other department, and at the same time assist very materially in supporting themselves and their fellow prisoners. If the appropriation be granted, the increased output of grain bags and other fabrics would reduce the cost of their manufacture so much that we could, to a great extent, prevent rings, corners, and syndicates being formed, to the detriment and injury of the farming interests of the State.—Ibid, p. 17.

You must never lose sight of the fact that the prisons are not, and never have been, self-sustaining. The appropriations from the State Treasury for San Quentin were for the last year \$129,500, and it was only by the most rigid economy (see Directors' Report, 1886, p. 6) that a deficiency was avoided. For the two previous years the appropriation was \$130,000 per year (Directors' Report, 1885, p. 5). The appropriation for Folsom for last year was \$95,000, which was insufficient, and \$12,100 was borrowed to meet the necessities of that year (Directors' Report, 1886, p. 7). The appropriation for Folsom Prison for the two preceding years was \$90,000

per year (Directors' Report, 1885, p. 5), and it was not found to be excessive, making a total expense to the State, in the case of Folsom, of \$287,100 for the past three years, while the quarries have earned the magnificent sum of about \$35,000 (see Warden's Reports for 1884, 1885, and 1886), and in doing so have nearly ruined the important industries of the quarryman and the stonecutter. The entire labor of five hundred and sixty-one men has been expended for three years quarrying and dressing stone, at an expense to the State of \$322,000, for the purpose of earning nothing. Is there any wonder the stone industry is ruined? We have no word of blame for the officers for this result; the fault is with the policy of the State. The remedy is with you, and the responsibility for its application can rest nowhere else.

Whatever may be the merits of the theory that the Government should protect the industries of its citizens, there is no question as to the fact that it pretends to do so in the United States; and for the avowed purpose of preventing the competition of cheap foreign labor with the American workman the National Government is in the police business on a most extensive scale. The policy is not peculiar to either of the great national parties. The Democrats Randall and Grady are as ardent in its advocacy as the Republicans Kelley or Blaine. Two eminent Democrats, Messrs. Morrison and Hurd, were defeated upon that issue at the last election, and the Speaker of the Democratic House of Representatives "was saved as by fire."

No silk or cotton, or woolen thread ever so fine, no woven fabric too delicate to escape the watchful care of the revenue police. They are found at every port of entry on our extensive seacoast, along the chain of the great lakes, and vigilantly guarding our Canadian and Mexican boundaries; yes, and in our revenue fleets upon the seas, to inspect packages and ships' holds, that neither needle nor steam engine shall come here without paying duty, that the wages of the miner and the ironworker may not be debased; to smell bottles and barrels and casks in behalf of the farmers of the Great West and the grape-growers of the Ohio, the Lakes, and California. Collecting the stated tribute upon wool and cotton, raw or manufactured, to protect the negro laborer in Mississippi, the factory girl in New England, and the shepherd on all our hills, and at what an enormous cost! Yet the people, including the unprotected, pay the increased charge upon every tariff-taxed article, and uncomplainingly, even willingly, bear the burden for the general good. Shall it remain for California, the peerless among States, to degrade and oppress her working people—to debase the patient, industrious mechanic, husband and father, by measuring the wages he shall receive by the cost of keeping a convict?

We have shown that the purpose in view at the time of the adoption of the new Constitution and the statute of 1880 was that the State should at once withdraw from its position as a ruinous competitor with free labor. This is demonstrated by the public utterances of its public men, by the inaugural of Governor Perkins, and by the reports of Wardens and Prison Directors for the following three years, and we have also shown that subsequently the prison authorities have considered themselves justified in disregarding the apparent manifest intent of these laws, and that in a new guise, not a whit less offensive or injurious, they have restored the old and condemned contract system *in toto*. We have shown that the industries of the prisons have been changed to suit the varying whims or vagaries of those in charge, and that while one administration lauds the success of a great chair-making enterprise, its successor has quietly abandoned it, and it is never mentioned more. We have shown that, in what is the

practical absence of all law upon the matter, the prison authorities have worked their own sweet will, and by unimpeachable testimony we have shown the shameful and damning results.

But all the reports of Directors and Wardens coincide in applause of the jute enterprise; and here is the easy and common-sense solution of the vexing problem. It will require at the beginning a small expenditure—small compared with the important results to be attained; but once established, the prison officers and Prison Directors can bend their energies with tenfold power in securing a self-sustaining prison system. Their attention being confined to one industry, permanently, they will not fail in accomplishing infinitely better results, both with the men and money at their disposal, than under the present "go-as-you-please system"—a little of everything, and nothing long. The operations of the prisons can be kept closely in hand; the net cash results will inure directly to the State itself, and not to contractors, who enjoy a practical monopoly of the various outputs, as at present; and, more than all, the people will be saved the rapacity of corners in sacks, for the production of the prisons will always keep the price as near the cost line as the authorities may desire; and the emancipated labor of the State, untrammelled and in a clear field, will cheerfully do their full share to promote its material welfare, and push it far forward in the front rank, a prosperous and happy commonwealth.



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REPORT OF THE JOINT COMMITTEE ON CLAIMS  
ON  
CLAIM OF D. JORDAN,  
FOR  
MATERIAL AND LABOR FURNISHED IN THE CONSTRUCTION  
OF THE BRANCH STATE PRISON AT FOLSOM.

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## REPORT.

*To the Members of the Senate and Assembly:*

Your Joint Committee on Claims, that had under consideration Senate Bill No. 86 and Assembly Bill No. 107 (to pay D. Jordan, contractor, for labor and materials furnished in the construction of the Branch State Prison, at Folsom), beg leave to make the following special report:

It was Mr. Jordan's request that the committee examine every competent witness obtainable; and, also, in pursuance of the committee's desire subpoenas were issued to ex-Lieutenant-Governor Johnson and Honorable Thos. Beck, ex-Prison Director, who acted in that capacity during the period of Mr. Jordan's contract; James W. Duncan, Superintendent of Construction, employed by the State to supervise Mr. Jordan's work; A. A. Bennett, the architect in charge, etc.

The witnesses so subpoenaed appeared before the committee, with the exception of Mr. Bennett, who was telegraphed for, but failed to respond. From the testimony taken (printed copies of which were placed on each member's desk), it was clearly and conclusively established that Mr. Jordan was, from the outset of his contract, hampered and harassed by the architect, who, by virtue of a clause requiring the work to be done "to the satisfaction of the architect," exacted unreasonable and wellnigh impossible performances on Mr. Jordan's part; he also neglected to make monthly estimates of the progress of the work, as conditioned in the contract, and upon which monthly estimates Mr. Jordan was to be paid 90 per cent; in fact, it was in evidence before this committee that the architect made but one progress estimate during the first five months of Mr. Jordan's work on the building, and the estimates he did make were so much under that Mr. Jordan did not receive to exceed 30 per cent of what he was entitled to. The testimony covering these grievances of Mr. Jordan is all contained in the printed evidence, and need not be detailed here. It is sufficient to call attention to the testimony of Mr. Duncan, the State's Superintendent, and a very unwilling witness, who testified that, to have built the cells as the architect sought to exact of Mr. Jordan, would alone have cost more than the contract for the whole work covered. By the testimony of Mr. Beck, Mr. Johnson, Mr. Duncan, and Mr. Jordan, it was established that this claimant had completed half, or more than half, of his contract at the time the architect's exactions drove him from the work, and the records of the State Controller's and State Treasurer's offices show that the entire amount Mr. Jordan was ever paid for work done in carrying out the specifications was but a fraction exceeding \$28,000. For extra work done he was paid something over \$3,000, making about \$32,000 in all ever received by him. The remaining half of the work done in completing the prison from where Mr. Jordan left off, carried on by the State under Mr. Bennett's supervision, cost over \$205,000; hence it is a matter of fact and of record that Mr. Jordan has never been paid by the State but

\$32,000 for doing the same amount, and a better quality, of work that the State subsequently paid \$205,000 for.

In allowing Mr. Jordan's claim for \$50,345 45, this committee based its action upon the actual amount due Mr. Jordan, shorn of interest. It did not feel justified in recommending that the State pay him interest from the time his claim dates; but it does earnestly recommend that he be paid the amount strictly his due, and as recommended in the amended bill, the original claim of \$79,000, having been cut down by this committee to \$50,345 45.

A. J. MEANY,  
Chairman Senate Committee on Claims.  
NESTOR A. YOUNG,  
Chairman Assembly Committee on Claims.

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## TESTIMONY

TAKEN BEFORE THE

Joint Session of the Committees on Claims

OF THE

SENATE AND ASSEMBLY OF THE STATE OF CALIFORNIA,

AT THE

TWENTY-SEVENTH SESSION OF THE LEGISLATURE,

IN REFERENCE TO THE

CLAIM OF D. JORDAN.

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Senate Bill No. 86—Assembly Bill No. 107.

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## TESTIMONY.

ATTORNEY J. N. YOUNG: I explained the nature of the claim to the House Committee about a week ago. I will not take the time at present to make any explanation except to say that Mr. Jordan claims that he is entitled to be paid for work, labor, and materials furnished in the construction of the Folsom Prison. He took a contract to complete the Folsom Branch Prison after Miles failed under his contract. The contract with Mr. Jordan was that he should complete the building for \$161,500. The contract will be introduced in evidence. It provided that there should be monthly estimates made, and that he should be paid 90 per cent of the estimated work, monthly, as it progressed. Mr. Jordan claims that he is entitled to his pay, for the reason that the State, through its agents—the architect, especially—underestimated his work, and failed to make the monthly payments according to the terms of their contract; by which he, Mr. Jordan, was required to expend large sums of his own private money, without being able to receive his pay from the State. I will state right now, to be frank with the committee, that we shall claim, and do claim, and the evidence we think will show, that it was the result of a design to break the contract in the hands of Mr. Jordan, and that that design was most successfully executed.

The first witness we will call will be Mr. Jordan.

### TESTIMONY OF DENNIS JORDAN.

Sworn.

Examined by ATTORNEY YOUNG: What is your name? Answer—Dennis Jordan.

Q. Where do you reside? A. San Francisco.

Q. What is your business? A. Contractor and builder.

Q. Are you the Dennis Jordan who entered into a contract for the completion of the State Prison at Folsom? A. Yes, sir.

Q. Examine this and see if it is a copy of the contract you entered into with the State [showing]? A. Yes, sir.

ATTORNEY YOUNG: I will not take time to read the whole contract. This agreement was entered into on the fifth day of July, 1878, by and between William Irwin, Governor of the State of California, James A. Johnson, Lieutenant-Governor of the State, and Thomas Beck, Secretary of State, constituting the Board of State Prison Directors of the State of California, the parties of the first part, and Dennis Jordan, of the City and County of San Francisco, the party of the second part. I would state without reading it, that he was to complete the building for \$161,500; that he was to take the building from where Miles left it, and was also to use the stone and material that was on the ground, and to complete it for that sum—the price of the material already on the ground not to be charged against him.

First, I will introduce this in evidence, Mr. Chairman; it is a certified copy.

Q. I will ask you if you entered upon the work under that contract? A. Yes, sir.

Q. At what time did you commence the work? A. I commenced the work immediately after the contract was signed; I commenced getting the material and plant on the ground, and commenced to work about the first of August.

Q. Eighteen hundred and seventy-eight? A. Eighteen hundred and seventy-eight.

Q. At what stage of progress was the building at the time you commenced working on it; how far had Miles progressed with it? A. What is called the cell building, that is, where the cells were built, inside the walls, there is a large building, and inside this building the cells are built, and those walls in what is called the cell building was up, I think, about eight or nine feet above the floor—what is now the floor; and the front building—what was called the officers' quarters—the basement and a portion of the second story was up; and the foundation was laid for the cells; that was all that was done with it.

Q. What material was on the ground? A. Well, there was estimated by the architect that had charge of the building when Mr. Miles was doing the work, he had an estimate of \$4,000 for the stone that was then on the ground; that was his last estimate; he never used any of that stone; and in figuring on the work I allowed something about that price for the stone that was on the ground, knowing that that was what they valued it at; and then there was some other stone. There were a few cells that were started that I had to take down again; they were not in the right place; the floors would be too high for the present floor.

Q. You say you commenced work about the first of July, 1878, and how long had you worked at the building before an estimate was made? A. The first estimate was made on November eighteenth.

Q. About how long after you commenced the work? A. Well, it was nearly three and two thirds months before I got the money; it was over two months and two thirds. I got the pay on the twenty-third of November.

Q. Then, at the very outset, instead of making monthly estimates, I understand you to say that they waited three months and eighteen days before they made the first estimate? A. Yes, sir.

Q. Whose duty was it to make the estimates? A. The architect's.

Q. Who was the architect? A. A. A. Bennett.

Q. How many men did you have employed in the business in July, up to the time they made the first estimate? A. I had an average, I think, of from one hundred and twenty-five to one hundred and fifty.

Q. State what material, if any, you had on the grounds, and what other improvements and expenditures you had made for the purpose of advancing the work? A. I had five derricks—two very large derricks and three small ones; I had two donkey engines of my own, and I had another one that I hired. I built a railroad track from the quarry to the building, and through the building.

COMMITTEEMAN: What was the distance from the quarry to the building? A. I should think the length of the track would be probably about a quarter of a mile.

Q. Were any of those tracks on the ground before you took charge of it? A. No, sir.

ATTORNEY YOUNG: Also, did you put up any buildings or temporary

structures for the accommodation of the men? A. I did. I put up a building there. The building that I had put up, including cooking utensils and bedding—the whole thing cost about \$3,000.

Q. How much? A. About \$3,000.

Q. How much on the account of labor, material, and work had you done up to the time the first estimate was made? A. I estimated it at that time to be worth a little over \$18,000; I could not tell you the exact figures now, but it was over \$18,000.

Q. Then Mr. Bennett came up to make an estimate, did he? A. Yes, sir.

Q. On the eighteenth of November? Well, now, what did he estimate your work at that time? A. He gave me an estimate of \$4,222 59, I think.

COMMITTEEMAN: How much is that? A. \$4,222 59.

ATTORNEY YOUNG: And you state you had expended about \$18,000 of your own money up to that time? A. Up to the fourteenth of that month—the fourteenth of November—my books showed I had expended \$18,000.

Q. Was that estimate of \$4,222 59 a fair estimate, or was it not? A. It was not; it was just about 25 per cent of what I ought to get.

Q. How do you account for the fact that Mr. Bennett made such a low estimate? A. I could not account for it, without he wanted to squeeze me, as the saying is. I never could account for it. I knew nothing about how much he was going to give me. He came there on the ground on the eighteenth.

Q. Well, you may speak plainly, because this committee must know the truth. How do you account for that low estimate being made? A. Well, I think he intended to drive me off of the job, and that was the first commencement of it. The first commencement was that he failed to give me my money in monthly payments, as the contract reads. You did not read that part of the contract, Mr. Young.

Q. I stated it. If the committee have any doubt about it they can read it themselves. They understand that, and I did not want to take the time to read the contract. I stated it to the gentlemen, and I think that is sufficient—that the work was to be estimated monthly, and you were to be paid 90 per cent monthly. I will ask you if subsequent events and occurrences still more fully convinced you that Mr. Bennett wanted to break you of the contract? A. No, I do not know of anything subsequent.

Q. I mean after the first estimate. Did he make other estimates that were in the same line? A. Yes, sir; after that he made the next estimate; after he gave me the estimate of \$4,000. I went and saw the Governor about it, and told him that I did not get over 25 per cent of what I was entitled to get, and the Governor's answer was that he had no control over Mr. Bennett's actions or how he made his figures or estimates; and I complained, at the same time, about not getting my monthly pay. He said that from that time he would see that I got my monthly pay. I went to the Governor previous to this, though, to see about getting my monthly pay. He told me the architect was sick, and that was the reason I did not get my monthly pay; and at this time he said he would see that I got my pay regularly every month after that.

Q. The architect being sick didn't pay your men, though, I suppose. The next payment, I understand you to say, was made about a month afterwards? A. It was made about that time. The Governor promised I would get it regularly every month after that; but I did not get it, as the Treasurer's books will show; it was the thirtieth of December before I got the next pay—it was nearly a month and a third.

Q. What amount of additional work did you do on the building after

the first estimate? A. I built up considerable of the walls of the outside building.

Q. At what expenditure—how many thousand dollars? A. And I built the foundation of the approach building—the new building that was added to the old one; and I done some iron work and done some carpenter work—the progress estimate will show what that amounted to; but on that estimate I claimed that I had about \$9,000—I think it was that—coming to me on that estimate. This time I figured the work up, and had everything ready for Mr. Bennett when he came.

Q. Here is a statement you prepared; look at that and identify it, because I want to leave it with the committee. What was the amount of work and labor performed between the first estimate and the second estimate? A. \$10,296 93.

Q. What amount did he allow you on the second estimate for that? A. This is not correct here. This includes \$2,400 for extra work, that I got for building the tower; it was about \$2,700 I got.

Q. What I want to know is how much he allowed you on the second estimate? A. \$2,700.

Q. And you had expended \$10,000? A. Yes, sir.

Q. Well, just go on without my asking you the questions, and tell the committee about additional work and estimates, and the payments they made you; you have got it all there before you. A. Well, on this day that he came, after making the second payment—

Q. [Interrupting.] Just confine yourself to that—you made that statement, didn't you? A. On the twenty-sixth of December Mr. Bennett came to make me the second estimate; and then I had all these figures ready of what work I had done through the month. I could not go back on what was done before, but took it from where I stopped in the previous month—the eighteenth of November; I figured all the work I had done to that time on up to the twenty-sixth of December.

Q. Well, take your figures there and tell me how much work you did between the second estimate and the third one, if you have got it there. A. No, I have not got it there, because I made no further estimate of the work for this reason—I will explain it if you will allow me.

Q. Go ahead. A. I was going to state that on the twenty-sixth of December, when Mr. Bennett came on the ground, I showed him my figures; I had everything all figured up. I had a plan made of the foundation of this building that I was working on; and Mr. Duncan, the Superintendent, and my foreman measured every day's work that was done. The foundation was down somewhere about twenty-six feet, I think, from below the surface; and as we built this work up, we filled in around it, so as to be able to stand and work around our work; we filled in there with dirt and stuff. So we made an estimate of every day's work, as it progressed. I had all this thing prepared for him when he came to the ground, on the twenty-sixth. This estimate was made and I showed it to him, and he paid no attention to it. He would not allow me only a little over one half of what I claimed.

Q. On these two estimates you have already testified about, you say you had altogether expended about \$24,000, as I understand you? A. Whatever the figures are there. I think it is more than that.

Q. Perhaps \$27,000? A. I think \$27,000.

Q. And you had received altogether \$4,222 and \$5,148? A. I got \$4,222; it was altogether five months before I got the second payment, the first of August to the thirtieth of December; but I was going to state that when Mr. Bennett refused to give me the amount that I claimed on this second

payment, I wrote to the Governor, requesting him to call a meeting of the Board where Mr. Bennett and myself would be present, so that I might lay my grievances before the Board, and ask justice from them. The Governor wrote me in answer on the same day acknowledging the receipt of my letter, and in almost the same words that I had in my letter; I think you have got the letter there, haven't you?

Q. Yes, sir, I think so; but go ahead. A. Acknowledging that he received that letter, but he never called the meeting, and I never knew anything about the meeting being called till a little over a month ago, when I discovered it here, by looking over the papers. I discovered a bill that was made out for this same work, and the bill was allowed by the Board of Examiners, on the thirteenth of March; you have the bill there. But it was not paid until the fourteenth of May.

Q. Didn't they raise the estimate of Mr. Bennett so as to make it three times as large, nearly, as the first estimate of his of the progress? A. That was the last one that was made—the last one he gave me.

Q. Do you recollect what he estimated it at? A. Yes, sir.

Q. How much? A. His estimate, after they took the work away from me, was for \$1,900—one thousand nine hundred and some odd dollars—and I refused to take that payment. That was for work done in the month of May; and through Mr. Beck there was another estimate made by Johnson, who was then the foreman for the State; and he allowed for the same work \$2,400 more than Mr. Bennett did.

Q. Making over \$4,000, instead of \$1,900? A. Yes, sir; the two together would be over \$4,000. I think about \$4,300.

Q. Take this statement you have prepared and tell the committee, without going into all the estimates of receipts and payments, the total amount you expended, and the total amount you received from the State, so they can see about how much you were injured by the derelictions of the State. A. The following is the amount of the expenditures on the Folsom Branch Prison, as taken from the ledger.

Q. From your ledger? A. Yes, sir.

Q. Well, you need not read the amounts of the expenditures, but just give the aggregates. A. These are the accounts of all the people I had dealings with, as shown on my books.

Q. And the amounts? A. And the amounts of the dealings I had with them, including my payroll and all that—all taken from my books. Everything here is correct, as taken from my books. The total amount that I had paid out, from the time I commenced up to the time they took the work away from me, was \$73,645 03.

Q. And how much had you received from the State? A. Up to that time all I had received was \$22,000; but afterwards I got more. The total amount that I received was \$32,319.

Q. How much had you expended altogether? A. \$73,645.

Q. Leaving a balance due you of how much? A. Leaving a balance due me of \$40,325, and some odd cents.

Q. Money you had actually expended more than you received from the State? A. Yes, sir.

COMMITTEEMAN: You did get some more, then? A. No, sir. I make this as the total amount that I received—\$32,319; but all I received up to the time they took the work away from me was \$22,000. The total amount that I have expended over what I received altogether, is \$40,325; and the way that I figure that up—I asked to be paid that amount, with interest from that time to this.

ATTORNEY YOUNG: You mean in order to make the \$79,000? A. Yes, sir.

Q. And about how much had you progressed in your contract; did you have three fourths done, or one half done, or what? A. I had it about one half done, I think.

Q. About one half done? A. Yes, sir.

Q. Do you know whether any careful estimate was made as to about what amount of profit you could have made on that whole contract, if you had been allowed to finish it? A. Yes, sir. In the year that they took the work away from me—in the next session of the Legislature after, in 1880, I think it was—there was a committee appointed from both Houses to investigate this matter; why it was they took the work away, and to look after the expenses of it, and all that. That committee appointed an expert to make an estimate on the work that was done, and how much it would take to finish the building according to my contract.

Q. Who was that expert? A. His name was William Curlett.

Q. Just answer my questions as shortly as you can, and if the committee want anything further they will ask you. Curlett made an estimate, you say. Now, what did he estimate would be your profit on the job, figured by him as an expert? A. Twenty-one thousand and some odd dollars, I think.

Q. Wasn't it \$20,500? A. You have got it there in your report.

Q. Well, we will refer the committee to the report. You do not ask in full for that whole \$20,000, but only about \$9,000 on your contract, because you had only completed about half the work? A. Yes, sir; a little less than half.

Q. State to this committee whether you could have completed that contract and made a profit, if the State had kept this contract with you, and paid you according to the terms of its contract? A. Well, my calculation was, if I was allowed to go on and do the work, as I understood it, and as I found the work on the ground, I could have made \$40,000 on the job. Before I signed the contract I was offered by a certain party, whom I have subpoenaed to come here, \$20,000 for my contract—not to sign it; but I was so sure and satisfied in my own mind that I had a good thing in it, that I refused to take the \$20,000. The man that offered me \$20,000 was Mr. William Dougherty of San José; no doubt some of you people know him. I subpoenaed him to come here.

Q. Now we will progress a little further. As the contract first read when you signed it, the stones were to be well hammered? A. The stone was to be well hammered.

Q. Now, as soon as it was ascertained that you had the lowest bid and you were to obtain the contract, what advantage was taken of you at the very outset—at the very start? A. Well, one of the bidders claimed that I could do that work just as I pleased; and he came there to protest against giving me the contract. There was a meeting held in San Francisco where all the bidders were invited to be present, and the Governor, the Lieutenant-Governor, Secretary of State, Mr. Livermore, Hayes, and Duncan, Mr. Calvert, and myself were present at that meeting; and Mr. Bennett and Mr. Duncan and Mr. Calvert raised the question that under those specifications I could do that work just as I pleased; that this term "well hammered" did not amount to anything—did not mean anything; because there is no such word or term used in the architecture business or in the building business, as "well hammered."

Q. Well, I want to know what they did with the contract or specification? A. The question was raised then about "peine" hammered. This

work that was on the ground that was done by Miles was "peine" hammered, but in a very inferior way. It was hammered just enough to take the rough off the stone.

Q. Well, what I want to know is this: did this committee change the contract and specifications so you had to do "peine hammered" work instead of "well hammered" work? A. They changed it to do "peine hammered" work equal to that already done at the prison by Miles.

Q. What kind of hammering had been already done by Miles? A. An inferior quality of "peine hammered" work.

Q. What is the difference between "well hammered" and "peine hammered" work? A. There is no such term used in the masons' business as "well hammered."

Q. That means stone cut properly, does it not—well hammered? A. No, sir; I could not tell you what it means; there is no meaning to it! In stonecutting they have various terms. First, there is "pointing," then there is "peine hammered," the next is "bush hammered," and the next is "finish patent hammered." Those are the phrases and terms used in the business.

Q. Well, we will progress a little further. As you went on with the work state how Mr. Bennett, the architect, conducted himself toward you in the matter. What obstruction, if any, did he throw in your way, or what did he do? A. Well, he came there on the eighteenth of November; it was said by my men that Mr. Bennett had told somebody that I didn't have money enough to do the work, and I never would be able to finish it. He said that probably this would be my last payment; and he condemned most of the work that I had already done, as not being fine enough cut.

Q. How fine did he want it cut? A. Well, he wanted it cut almost as fine as if it was for some first-class building here in the city. The work would show for itself that it is as fine as if it was done for Mr. Stanford, if Mr. Stanford was having the work done, or any other gentleman in the city. He wouldn't ask for any other kind of work so far as the "peine hammering" goes.

Q. State about his finding fault with very little matters in rocks that were placed away down under several layers of rocks; state what he did about that. A. Well, he used to find fault with the stone after the cells were built. He came there with a piece of red chalk in his pocket, and he would make a cross on this stone and a cross on the other. He said: "Mr. Jordan, you will have to take this stone out; this stone won't do." And to take that stone out I would have to take down at least a dozen cells, because the stone was all tight in together—bonded in together in such a way that you could not take the bottom stone out without taking out the top—and I would have the cells all completed and the roof on.

Q. Was there any such defect in any of those stones as to make it necessary? A. No, sir. I did not take the stones out—they are there yet; but he insisted on them doing it.

Q. Didn't the State have a Superintendent there who was a competent architect? A. He was a competent builder.

Q. A competent builder, was he? A. Yes, sir.

Q. Who was that? A. Mr. James W. Duncan.

Q. He was there as a salaried officer of the State? A. Yes, sir.

Q. To inspect the work as it progressed? A. Yes, sir.

Q. And you had put up these cells, and put up these stones under his supervision? A. Yes, sir; he seen every stone that came out of the quarry.

Q. Do you know what kind of dressing these cell stones had at the time Miles left the work? A. Yes, sir; they were rough peine hammered.

Q. Well, was Mr. Bennett content to accept that kind of finish from you? A. Well, he objected to it when he first came on the ground.

Q. That is what I want to know. Did he require you to dress them all over, so as to give them an extra finish? A. He did.

Q. Describe what was the difficulty in doing that after they had been out of the quarry a long time? A. Well, they were very hard; and the most of this stone, in the cells, a man would have to go with a piene hammer and work all around with his hammer; and sometimes on a scaffold to piene hammer this over, until he got it down fine enough to suit Mr. Bennett.

Q. So Mr. Bennett was not satisfied with even the kind of work that had been accepted before, but compelled you to do this extra work? A. Yes, sir.

Q. How about joining it together? A. Well, it was all what is called clamped and dallied together.

Q. How fine joints did he require your workmen to make? A. Well, he authorized the Superintendent to compel me to make the joints three eighths thick, or three sixteenths, I think it was. Mr. Duncan would remember better; but I objected to doing it and didn't do it; and he wrote to the Superintendent, telling him to make, or compel me to make, the joints three sixteenths.

COMMITTEEMAN: What are the usual joints? A. Well, about a quarter of an inch would be a fair joint in that class of work.

ATTORNEY YOUNG: State if three sixteenths is not as fine as is ever put upon the most elegant buildings? A. They seldom get them down as close as that.

Q. But he exacted that of you in this public structure for criminals? A. Yes, sir.

Q. What else did he do to indicate his determination to break you up? A. Well, he came there one time and found I had a large space of flooring made, and he ordered me to take that flooring all up. I refused, and he came down to this city here and notified the Governor to call the Board together and come up and examine the work. They came up there together—came on the ground—and Mr. Beck told me they had come up there for the purpose of making me take up this flooring, and he wanted to see for himself; told me to give him a straight edge and a level, and he took his coat off and went all over this floor and leveled it; and when he got through, Governor Irwin asked him what they were going to do to this floor, and he stood up and put his coat on, and looked at the Governor, and the words he used were he would be G—d—d if that would be taken up with his vote.

Q. Who was that? A. Mr. Beck, who was one of the Commissioners. He said he had leveled it, and it wasn't over three eighths out of the way, and it was a long space of floor. I suppose there was two hundred feet at least leveled, and that was very little out of the way.

Q. In other words, I understand you to say that that floor is as level as you can get it? A. Yes, sir.

Q. Who ordered you to take it up; Mr. Bennett, the architect? A. Yes, sir. I had the very best mechanics I could employ in the State to work on that floor. I spared no time, no labor. I labored as hard as the hands of man ever could labor.

Q. Now, then, besides withholding your money, making your estimates 25 per cent instead of 90 per cent, causing you to take out these rocks, and ordering you to take up the floor and do extra peine hammering, and make three-sixteenth joints, and all that kind of work, what about requir-

ing you to employ an impossible number of men, and impossible or unnecessary material? A. Well, they gave me an order—that is, the Governor and the architect, the people that were running the whole thing—they gave me an order to employ seventy-five stonecutters in addition to what I had agreed on.

Q. How many had you already? A. I had then about forty, I think.

Q. Had you enough stonecutters to finish the job within the contract time? A. Well, no; I don't think I had. It was almost impossible to get stonecutters to work in that place.

Q. And you didn't require seventy-five more? A. I had an advertisement in the papers in this city here calling for stonecutters and quarrymen, and I was offering 50 cents a day more than they were getting in San Francisco, or in this State at that time, in order to get them. I have a copy of that here; you have a copy there of that advertisement. I could not get them. I did not have it in my power to get more men. It was impossible to get more men. They never got them after they took the work away from me. They never had as many men as I had myself.

Q. Did you require seventy-two more stonecutters? A. No.

Q. How many more did you require? A. Oh, I could work about thirty more, or thirty-five. I did not believe I could have got twenty stonecutters in the State, if I should give them five dollars a day; the wages then were three dollars.

Q. Well, what did they do then to break you of the contract, when they could not wear you out on money? A. Well, they ordered me to furnish a large amount of material that never was required.

Q. For instance, how many bricks? A. I think a million of brick they ordered me to furnish. All the brick I wanted was just toppling out the chimneys.

Q. I will ask you if you recognize this as the requisition they made upon you, so as not to take up so much time. We will prove it, and then we will leave it with the committee, because you make so many explanations it is going to take too long if we go into all of them. Do you recognize this as the requisition they made on you? Just look at that. A. Yes, sir; that is the one. I have seen it many a time before.

Q. [Reads:] Seventy-five stonecutters; fifty quarrymen; seventy-two stone masons; twenty-eight tenders; six blacksmiths; ten general laborers. And to procure the following material, to wit: five hundred barrels of Portland cement; one hundred barrels Rosendale cement; five hundred barrels lime; five hundred cubic yards sand; six thousand pounds steel (including hammers); five hundred pounds plugs and feathers; one million bricks; ten tons Cumberland coal; three dozen blacksmiths' files; three mules; two one-inch Norway iron chains, eighteen feet long; four three fourths-inch Norway iron chains, fifteen feet long; eight derricks; eight five eighth-inch Norway iron chains, twelve feet long; two bundles five eighths Norway iron; twelve bars three fourths Norway iron; two coils four and one half-inch manilla rope; two coils four-inch manilla rope; three sets of blocks, 12x14 inches; one hundred kegs assorted nails; two hundred kegs of blasting powder; one thousand feet fuse; ten sets blacksmiths' tools, forges, etc.; one hundred and seventy-five thousand feet lumber, and sufficient mill work.

Q. I will ask you if they made that whole requisition on you at one time? A. Yes, sir.

Q. And under the contract you were required to furnish that within fifteen days, or they could rescind your contract? A. Yes, sir; they could take the work in their own hands, and go on with the work.

Q. Now state to the committee whether that amount of material was required? A. Well, I could not tell you what was required upon that; but I will say that that million of brick was not; Mr. Ryan, of this town, furnished the brick; and the record they hand to the Legislature only amounts to about \$400, that they paid for the brick they used there.

Q. About how many brick was that? A. And that was the freight and everything, delivered on the ground, I believe.

Q. About how many bricks would that purchase? A. It wouldn't take over 10,000 brick.

Q. And they demanded a million? A. Yes, sir.

Q. Was there a necessity for two hundred kegs of blasting powder all at once? A. No, sir. I had done then the largest portion of the work that the powder was required for. I think probably twenty-five kegs of powder would have been enough.

Q. In other words, they demanded three or four times of everything, pretty much, that was required to complete the building. A. Yes, sir.

Q. Is that the fact? A. That is the fact.

COMMITTEEMAN: What was the object of six hundred pounds of steel? A. Well, about the same object that the million of brick were—there was no million of brick wanted. Their own report here in this book will show the amount of brick that they paid for after they took the work away from me.

Q. Were you not supposed to have some of this material before you took the contract that is specified in this book here? A. Yes, sir; but I wern't supposed to have this material they never wanted at all.

Q. This was before you entered into the contract— A. [Interrupting.] No; this was an order they gave me on the thirteenth of May. I entered into the contract on the twenty-fifth of July, 1878, and in 1879, May thirteenth, they made this order. I was then working about eight months on the work.

Q. I will just read this to the committee. They will understand it is the report of a joint committee of the Senate and Assembly of the twenty-third session; and this committee made this report: [Reads] "It was ordered that Dennis Jordan, contractor for the building of the Folsom Branch State Prison, be required to place on the said work, in addition to the one hundred and fifty men required to be placed thereon by an order of date April 1, 1879, and keep continuously thereon, the following number of mechanics and laborers, to wit." And then comes the requisition. Then the following: [Reads] "It appears from the testimony that the architect and Governor Irwin were the prime movers in the making of such requisition, and that many of the things directed to be procured *at once* would not be required for months afterwards, and until near the completion of the work, and Governor Irwin himself stated that when he made the requisition *he did not expect that Mr. Jordan could fulfill it*; that he thought it was *impossible* for Mr. Jordan to comply with the requisition. By the terms of the contract, the contractor was to have fifteen days from the making of any such requisition in which to comply with its terms, but notwithstanding, it appears by the records of the Board of Prison Directors that on May 19, 1879, six days after the requisition was made, and before the work came under the control of the Directors, the Board employed William Johnson as foreman of the work at the Prison, at a salary of \$200 per month. It appears, also, from the testimony of Governor Irwin and Mr. Duncan, that within a few days after the making of this requisition, Governor Irwin instructed Mr. Duncan to procure everything that was necessary for continuing the work of Mr. Livermore." You

will see later on in the report why it was necessary to get it out of Mr. Jordan's hands. It would have required about \$80,000 more for Mr. Jordan to have completed the contract; as this report shows, under the management of these parties afterwards, it cost \$205,000, and then there was a deficiency—there had to be an additional appropriation to complete it, and they did much inferior work to that they required Jordan to do—they did rough work instead of piene hammered.

COMMITTEEMAN: You say the architect ordered you to take up this floor? A. Yes, sir.

Q. And the floor was two hundred feet long? A. Not the floor we had to take up; but the distance Mr. Beck leveled was about two hundred feet.

Q. You say Mr. Bennett leveled this floor? A. No, he didn't level it.

Q. Mr. Beck did? A. Yes, sir.

Q. Was he competent to level it? A. Yes, sir; he is a carpenter by trade. He has carried on the building business himself.

Q. What was the length of the level he used? A. I think maybe it was sixteen feet long.

Q. Don't you consider that an unusual requisition to be claimed from a contractor? A. Yes, sir; the Governor himself stated before this committee that he didn't expect I could fulfill this.

Q. If you could get along with less material, less steel and so forth, by good management, you were entitled to do it? A. Yes, sir.

Q. Wasn't it your agreement, when you took the contract, to furnish this material? A. Not to furnish one third of what was called for. Not one tenth of the amount was required that this calls for.

Q. I want to ask you another question. What fault did the architect find with the floor? A. He said it was out of level about an inch and a half, or an inch and three quarters.

Q. And Beck estimated it was about three eighths out of level in two hundred feet? A. Yes, sir.

ATTORNEY YOUNG: That report of the joint committee of the twenty-third session I think will convince this committee that Mr. Jordan has been very much abused. That Commission took any amount of testimony—they went into it thoroughly. The State would make any private citizen respect his contract, and it is its duty to do the same thing. The fact of the matter is, Mr. Jordan was then what we call a wealthy man, and to-day he is not worth a dollar—it broke him up. Mr. Jordan knows a great deal more about this, but it will take too long to get at it.

Q. Was Mr. Dougherty subpoenaed before this committee? A. Yes, sir.

COMMITTEEMAN: He was subpoenaed. Mr. Dougherty telegraphed me to-day that he could not get here before Saturday.

COMMITTEEMAN: Your testimony here shows that Mr. Bennett required you to go over some of the stone-work that was laid by your predecessor? A. No; it was not laid by my predecessor, but it was cut and on the ground when I took the work, and it was the same class of work that I was to do—the quality was to be exactly what was on the ground at that time, when I took the contract; and he was not satisfied with it; he made me do it better. When he made this change from well hammered work to piene hammered, he put in with that, "to the architect's satisfaction."

Q. I understood you to say that it was laid, and a man would have to take and hammer it this way [indicating]. A. That is what I laid myself; I had to go all over it again.

ATTORNEY YOUNG: In other words, that the committee may understand, as soon as it was ascertained that he had the contract, instead of some others, they changed the contract from "well hammered" to "piene



hammered," and put in "to the satisfaction of the architect," the architect being thereby enabled to break him out of the contract.

COMMITTEEMAN: I was under the impression that you had to go over some of your predecessor's work. A. No, sir; this was all cut by my predecessor, but not laid.

COMMITTEEMAN: He said when it was in the building the architect made him go over it and piene hammer it.

Q. I would like to ask you one question: Can you tell what object the architect had in trying to break you out of that contract—whether you know the object? A. Nothing more than what you may judge yourself. He must have had some object in view, and the only object I could see he had in view, was to take the work in his own hands, and make money he could out of it. That is the object I could see. He had already built one building for the State, after the one burned down at San Quentin. The State had appropriated \$200,000 for the reconstruction of that building, and Mr. Bennett was the architect. Governor Irwin, I think, was then acting Lieutenant-Governor; and that building was reconstructed for that \$200,000, but the State furnished an addition to that. It made the brick on the ground, and it laid the brick, furnished the carpenters' labor, furnished the labor for all the blacksmith work, and furnished the labor for doing the general rough work; and the State had to furnish \$200,000. The timber that was required for building that rough building, where the walls were whitewashed, and for the raw iron for making anchors, and so forth, and the bars to the windows, and the tin, and paint, and glass for the windows, that was all they furnished for that building for the \$200,000.

COMMITTEEMAN: Was Mr. Bennett the contractor for that? A. He was the architect. The State did the work, and they wanted to do this work, but under the bill they could not do the work if the work could be done within the appropriation of the bill. As I understood it, the State could not do that work if the bids would be lower than the appropriation.

ATTORNEY YOUNG: You were asked if you were a contractor and builder; have you ever built any other public buildings before this? A. Yes, sir.

Q. What buildings have you constructed in this State? A. The first large building I think I built was St. Mary's Hospital. I built the new Merchants' Exchange, now on California Street; I built two thirds of the Occidental Hotel; I built Starr King's church; I built the Jewish synagogue; I built the Marine Barracks at Mare Island; I built the Naval Hospital at Mare Island; I built the House of Correction; I built the Agricultural College of the State University—the first building erected on those grounds. I could not tell you how many buildings I have erected.

Q. I merely want the committee to understand that you are no novice at this business; that you know you could have made a good profit on your contract if the State had acted fairly with you. A. I could, with my figures, have made \$40,000 on the work; and I refused to take \$20,000 from Mr. Dougherty. I was so well satisfied in my own mind that I had a good contract, that I would not sell out for \$20,000.

COMMITTEEMAN: In the testimony before the House committee there was something said about the architect moving your quarries. A. Well, that was after they took the work away from me.

ATTORNEY YOUNG: After they took the work away from you, they went to build a ditch for the Natoma Ditch Company? A. The Natoma Ditch Company were making a canal from the American River, to run down through this valley, here; and Bennett often wanted me to go up there to get my stone from there, although the specifications said that the stone

must be taken from the quarries owned by the State. My understanding was that he wanted me to go up to the ditch—to this cut—and take the stone from that cut, and I refused to do it.

Q. In other words, as soon as the State took control of it, under their architect, Mr. Bennett, instead of getting the stone where it could be made cheaply, it went down to this canal of the Natoma Water Company? A. Yes, sir.

Q. You don't know who got the benefit of that? A. It was a benefit to the Natoma Ditch Company. They built about three quarters of a mile of railroad, and they erected a tramway from the river up to the building; it was a very steep incline, and they had a stationary engine there.

Q. When you had it in your hands Mr. Bennett wanted you to cut the rock in the Natoma Canal, and remove stuff they would be obliged to remove? A. Yes, sir; that is what it was.

Q. I want to introduce this statement, Mr. Jordan. I understand you that these estimates are correct—that you had expended altogether \$72,-645? A. \$73,000.

Q. And the State paid you \$32,319, leaving \$40,325 of your own money that you had paid out; also one half of your profit, amounting to \$9,000? A. The time I had worked on the building.

Q. And interest from 1879 at the legal rate? A. Yes, sir.

Q. You claim \$79,000 as being justly your due? A. Yes, sir.

MR. YOUNG: I ask to file this with the committee, so the committee and the Chairman may refer to it hereafter; you can get it in the library. I will ask the reporter to take it down, and if you go to the reporter he will give you the number of it. I will give you the pages and I want you to read it for yourself. This is the appendix to the Journal of Senate and Assembly, Vol. V, twenty-third session. And I want them especially to read the report of the State Prison Committee of the Senate and Assembly acting in concert with each other. They visited the State Prison at San Quentin, and the Branch Prison at Folsom, and they made a thorough examination and inspection of the same. They also, as stated in their report, took testimony. I ask you to read that report. This is the report of the committee of the Senate and Assembly, acting in concert, during the twenty-third session, of the year 1880. And in that report I will ask you to read pages four, five, six, and seven, and down near to the bottom of page eight, of that report. I will just read one sentence so you will get the purport of it, and I will ask you to notice it particularly:

"We find that for some reason or other the architect seemed disposed to put obstacles in the way of Mr. Jordan in the finishing of the contract, often condemning work, and requiring it to be removed, that had been accepted by the Superintendent, Mr. Duncan, and he often stated to the men working for Jordan that there would not be money enough coming to him, Jordan, to pay the men their wages at the end of the month, and telling them at the same time that it would be better for them when Jordan should cease work and the Directors take the finishing of the work into their own hands."

This is the report of the committee of the Senate and Assembly. That is their language after thorough investigation; and the position we take is this: That the State was in duty bound to make its estimates and its payments according to its contract. If you or I, or any other man who is not a millionaire—a man of limited capital could not take that contract and finish that building, that would not be broken up the same as Mr. Jordan was, under that kind of an administration.

## TESTIMONY OF JOHN CALVERT.

Sworn.

Examined by ATTORNEY YOUNG: Your name is John Calvert, is it?

Answer—Yes, sir.

Q. What is your business? A. Mason and builder.

Q. Where do you reside? A. 812 Hyde Street.

Q. State what you know about this contract that is in question—the building of the Folsom Prison. A. I went up to estimate upon it.

Q. Whom did you go to estimate for? A. For to put in an estimate on the building to finish it, and I went there and came away. I saw what work was done, and what material was got out. I done so, and I came down to Sacramento on Sunday, and Mr. Livermore came and said: "Are you coming up to bid on the prison?" I said: "Yes." He said: "I am going to bid on it." I said: "I am going to bid on it." He said: "I am going to finish it, because I gave them the land, and I want the labor for me." He said: "If you come in to bid on that"—and said as much as to say he would burn me up. I said: "I will bid on it," and I came prepared—I don't know how many thousands, but over five, any way. "Well," he said, "if you are determined to bid on it, if you do one thing, I will go in with you. If you put the building up, I will attend to all the business down below in San Francisco."

Q. Who said that? A. Mr. Livermore; and he said, "My son will go on the bond and furnish all the money." Livermore put in a bid. I didn't put in a bid; and when Jordan was below us, before I came home, he told me I had better use my labor to get Jordan out of it.

Q. Did you figure on what kind of work was to be done? A. I figured on the kind of work that was done, and the material that was on the ground.

Q. Did you adopt that as the standard? A. That was roughly got out.

Q. Why did you adopt that as the standard? A. I was told to do so by the architect.

Q. The architect, Bennett? A. Yes, sir; to go and examine the work.

Q. And the additional work was to be done on that standard? A. Yes, sir.

ATTORNEY YOUNG: I want the committee to understand that this same architect instructed this man that he could do his figuring on the basis of the work already on the ground; and when Mr. Jordan got the work he had to peine hammer it all over again.

THE WITNESS: I had to take that in order to know what was to be done. They appointed to meet down in the hotel on Bush Street, and the Governor and Livermore came to me and told me to do all I could to get Mr. Jordan to give it up, and to give him a check—a certificate—for what he had deposited. I offered it to Jordan, and he would not take it.

Q. How much was that? A. [To Mr. Jordan.] Do you remember the amount of the check?

MR. JORDAN: The amount was \$17,000.

A. Well, it was an amount equal to that. I offered him a check for what he had put up—a certificate upon the bank; and we met there, and everything was gone over; and the Governor asked me to read the specifications, and find if they were strong enough to make a good job. And I came to the specification where it called for it to be well hammered stone; and I said a man could hammer it a dozen times in one spot and not make a proper face on it. I said it should be properly peine hammered. So we went and underlined it where I seen any error in the specifications. He said he would read it over again; the Governor done that himself. Ben-

nett was sitting there, but Bennett did not take so much part in the alteration, but consented to have it put in.

Q. That was after you did not get the contract? A. Yes, sir.

Q. If you had got the contract it would have been well enough. A. Well, I wouldn't have picked those things out, to tell you honestly.

ATTORNEY YOUNG: That is all. Take the witness.

CHAIRMAN: Gentlemen, do any of you desire to ask any questions?

COMMITTEEMAN: What is the difference in the cost between this peine hammered work and the manner in which the contract was first drawn? A. Peine hammering will cost fifteen to twenty-five cents a foot.

Q. What would the other cost? A. The way it was drawn you could strike one blow in a foot square, or two blows; you could take it with one or two, just as you had a mind to.

Q. Have you any estimate in your own mind? A. I have not the figures of the building at all—not since I was bid out of it.

## TESTIMONY OF JAMES W. DUNCAN.

Sworn.

Examined by ATTORNEY YOUNG: What is your name? Answer—My name is James W. Duncan.

Q. What connection had you with the construction of the State Prison at the time Mr. Jordan had the contract? A. I was appointed subsequent to Mr. Jordan's taking the contract—a few days subsequent to his signing the contract—to act in the capacity of Superintendent of Construction on behalf of the State. I was employed by the Commission.

Q. What were your qualifications for that position? A. I served six and one half years' apprenticeship for a builder, and practiced it for a great many years.

Q. What is your business, then? A. A builder—a general builder; a contractor.

Q. Do you know what condition the building was in when Mr. Jordan first went there to enter upon his contract? A. Yes, sir.

Q. Describe it to the committee. A. Well, there was a large building, about eighty feet wide and about four hundred feet long—I am not sure about the four hundred feet. There were four walls built around, and four rows of cells running through, with three corridors—a corridor on each outside, and one running down through the middle—making four rows of cells. It was two stories high. Then there was what was then the officers' quarters—the hospital in front of this—making a building about eighty feet by one hundred and twenty-five, very irregularly built. The front part of the building was up to the second story, ready for the joists on the second story, with partitioned walls.

Q. Were you there at the time Mr. Jordan was broken of the contract? A. Yes, sir.

Q. About what was the condition of the building when he left it? How far had he progressed with the work? Describe to the committee its stage of advancement. A. Well, the cell-house building was carried up ready for the roof, with the exception of a little corner. I should think there was about seventy-five feet of wall, one scaffolding high—that would complete the cell house. Then there was a new building, what we called the approach, where the officers' guard is. That was entirely new; that was built up pretty near the second story. Mr. Jordan built all of it. There

was also another addition. Probably it would be as well for me to explain that.

Q. Explain it to the committee, because they haven't given it much attention, perhaps. A. There had been a set of plans drawn, during Governor Booth's administration, by R. C. Ball; and this plan was a very expensive plan, and when the contractor, Mr. Miles, failed in carrying out his contract, and the building stood some three years in the condition it was in, then further appropriations were made under Governor Irwin's administration, and Mr. Bennett was employed to modify Mr. Ball's plans, and cheapen them up in every way he could. So these plans had been changed to some extent, and alterations made; doors were made wider, and openings closed up, and various changes were made in the building, and two additions—an addition for bath-room and water-closet in one end, and an approach building on the east end of the cell house—the building to be forty-five by fifty-five feet. A two-story building was added.

Q. You say you were there when he quit the work? A. Yes, sir.

Q. And the main body of it was up about high enough to have the roof put on? A. The cell house and the approach building were up above the second story, ready for the joists.

Q. You mean the building that the Warden occupies? A. No. I mean the building that the Captain of the Guard occupies. That is the approach building, you know, where you enter the prison.

Q. At the time the first estimate was made, about how many cells did Mr. Jordan have completed? A. Well, I could not say. It was no part of my business to keep a record of the amount of work done. Mr. Bennett kept an estimate of the work done. It was several years ago. I kept no data, no memorandum.

Q. You examined the work as it progressed? A. That was my business.

Q. You inspected the material? A. Yes, sir; from day to day.

Q. Now state to the committee what kind of a job you required to be done there. You were there in the pay of the State, were you? A. I was. There was what we called the rubble walls, broken ashler, horizontal joints, and vertical joints, and so forth; that is a sample of the work we carried out, the same kind of work as—

Q. [Interrupting.] What I want to know is, what kind of work you exacted of him: whether it was good, indifferent, or bad? A. I exacted of him, just as nearly as I could, what the contract called for, and that was the same kind of work that was on the plan. I had no right to ask better work. I had a right to ask it to be done in a good, workmanlike manner.

Q. When the cells were put up, what was Mr. Bennett's conduct? A. He didn't find any fault with the rubble work, or the ashler, but when he came to the cells he was very particular about the cutting of the stone. We commenced using this old stone that was on the ground, and he objected to little places being broken out of the stone, and wanted the joints closer. He said it wasn't good work, and I insisted that he could not expect to cut this old stone over; that I thought it was making good cells—and in fact they are good cells; I know they are good cells—as good cells as have been built since, and better. But he objected still, and insisted upon it, and every time he came there we had a confab about the quality of the cutting. He wanted very fine work; he said the joints were not close enough; he required three-sixteenth joints.

Q. What is your opinion, as an expert, about three-sixteenth joints in a State Prison? A. Well, I don't think Mr. Flood has three-sixteenth

joints on his brown-stone-front building on Nob Hill. There are very few joints three sixteenths.

Q. But Mr. Bennett, the architect, insisted on having these three-sixteenth joints for these felons? A. There was no particular object in having them so close when the walls are sixteen inches thick; he put in Portland cement, which is as hard as stone when it hardens.

Q. Three sixteenths is about as thick as a half dollar? A. Well, a little thicker than that.

Q. What is your opinion of the manner in which he condemned stones that were in the work, where there was some little indentation, or where it didn't strike his fancy—what was your conclusion as to his conduct? A. I thought he was unnecessarily strict. I should have allowed the stone to go in, because they were on the ground; and I considered it was my business to let them go in. I have had as much experience in constructing stonework as most men. I considered I was entirely competent to oversee that work. I have passed examination before a Board of engineers and architects.

Q. You have heard the testimony of Mr. Jordan about the work that he did, about the amounts of money he expended, about the low estimates, about the delay in receiving payment from the State, about the unreasonable requisitions, and all those matters. Now, I will ask you what was your observation, and what you would say in regard to those matters—whether they are accurate and agree with your understanding of the facts? A. Well, that is a pretty broad question to ask at once. In regard to the financial part of it I know Mr. Jordan continued to complain to me, but I used to keep far away from that; it would be no part of my business to attend to financial matters; it would be my business to see to the construction and keep order there on the place, and all that kind of thing, and to look out for the interests of the State; to see that there was no trespassing on the grounds—that was a part of my business. Mr. Jordan would come to me and complain from time to time, and I sympathized with him, but I could do nothing; no recommendation of mine would amount to anything; and I know that he complained generally about payments.

Q. Was it your judgment that the architect was unreasonable with him? A. Well, I thought he was.

Q. And you were the State officer? A. Yes, sir.

Q. Didn't you even go so far as to secure some matters where they had created a distrust of his financial ability? A. Yes, sir. Mr. Jordan had a comfortable boarding-house there, and there was so much said about Mr. Jordan's solvency there, that the butcher objected to furnishing meat, when Mr. Jordan was away, and I told him that I was worth probably \$500; that I had that much in Folsom, and that I would be responsible to the amount of \$500 for meat; I would not go any further than that, but I would certainly be responsible for \$500 for Mr. Jordan. I had known him for years. He would have stopped if I had not told him I would be responsible.

Q. If the State had given Mr. Jordan the proper measurements under his contract, and had paid him promptly, could he have completed that building for the amount of his contract price, do you think? A. In the first place the thing was demoralized by the general impression that his credit was broken down; doubt and distrust was created with the stone-cutters.

Q. Who broke down his credit? A. Well, I think this circulation that he had not enough money to do the job.

Q. Who circulated that? A. I think Mr. Bennett was at the bottom of

it; he generally came up that way. I don't know what he told them of my own knowledge altogether, but I heard a great many things. Mr. Jordan employed stonecutters by the piece, and he made his arrangements accordingly; and Mr. Bennett was insisting on this fine peine hammered work, and, of course, the stonecutters wouldn't continue to go on by the piece at the rate that Mr. Jordan had arranged with them—they wouldn't work at the price that he had agreed with them; and then he had to put them on by the day—he was doing this work very much finer than the work that was on the ground, and, of course, it cost him more; and then, the stonecutters becoming dissatisfied generally, I know he didn't get anything like the kind of work after they were working awhile as he did before.

Q. The original question was: If he had been allowed to complete the building—construct it under your supervision, as you understood it was his duty to do, and the State had estimated his work properly, and paid him promptly, could he have completed it for his contract price? A. I think he could, sir.

Q. And made a reasonable profit? A. Well, I don't *know* about a profit; I think he would have got through with it, but I was not calculating profits.

Q. He was broken of his contract and lost the money he had expended in it, but I suppose you don't know the amount of money he had in it? A. I don't know anything about his financial matters.

COMMITTEEMAN: Do you consider three-sixteenth joints any better than five-sixteenths or three-eighths? A. No, sir; not for that kind of work at all, because this stone is very hard, and the walls are sixteen inches thick; the bed is of hard granite stone, and it has got to be pointed very nicely to come right together. These little irregular places were pointed out and filled right up with Portland cement, embedded right in; then dowel pins were put in, and clamps, so it could not be dug away, or could not get the stone out without tearing it all to pieces. If you fixed the joints all right, I consider a half-inch joint to be nearly as good as a three-sixteenth.

Q. Did the specifications call for three-sixteenth joints? A. No. No such joints were called for in the specifications.

Q. Is it not almost impossible to keep the walls in plumb with joints so small? A. You have to work the rock very carefully.

ATTORNEY YOUNG: It would cost half a million of dollars to make such joints. Wouldn't it cost half a million dollars if constructed that way? A. Well, the cell work would cost more than the whole contract if it was done as Mr. Bennett required it to be done.

Q. You remained there after they broke Mr. Jordan's contract? A. I was there under their direction.

ATTORNEY YOUNG: I want the committee to pay close attention to this:

Q. After Mr. Bennett, the architect, took charge of the matter, what kind of work did they do? A. Well, they finished up the walls in about the same manner that Mr. Jordan had been doing. The approach building and the walls were finished up in the same style of work. They finished up all the cells in the same style of work Mr. Jordan had been doing, as far as he got the four rows started, and then they found it was costing a great deal, and they calculated the money, and orders were given to put in rubble cells—just stones of the regular size.

Q. Was any improvement made by Mr. Jordan, omitting iron about the doors? A. That was done from the very first start.

Q. What was that improvement? A. They were the front doors. This was to be twenty-six inches wide. This little space—that paper—repre-

sents the stone sixteen inches wide; here is the door, right here. This stone was to be split and the door frame inserted in between; then this was to be clamped together.

Q. That was according to the specifications? A. That was according to the specifications. Well, that frame had to be set up and then worked around.

Q. Well, what improvements were made? A. Well, Senator Nunan was up there in Mr. Jordan's employ, a very able mechanic and draughtsman, and he said he disliked the doors, and I said I was not perfectly pleased with them. So he made a drawing of a door and submitted it to me, and I said: "That is certainly a great improvement, to cut the stone out solid and insert these doors without splitting the stone."

Q. You considered that a decided improvement? A. I considered it so; but I said I had no authority to accept it. So he had a meeting of the Board called, and had me come to Sacramento, here to the Capitol, and place it before the Board, in Mr. Bennett's presence. I made my statement before the Board. I considered it was a great improvement on the old plan, and the Board then and there adopted the plan.

Q. Now, I will read this to you, and see if this expresses the style of work done when Mr. Jordan had the work. This is the testimony of Architect Curlett: [Reads.] "Passing up the iron stairs to the second story, I find forty-two cells constructed of dimension stones, peine hammered, and two cells with floor, roof, and one side of dimension stones. The remaining cells on this floor, like that of the first story, are constructed of rubble masonry; but in this work the artificer seems to have been gradually losing all interest in his work, for the walls and angles are constructed in many cases in a very rough manner, whilst some of these walls are topped out, with exceedingly small stones, and in few cases are they built up to the ceiling, but some left with a piece of lumber partially supporting the heavy roof stone covering, which has in one or two cases split the top portion of side walls. The ceiling or roof stones, which are left rough from the quarry, and in one or two instances the joints are left open, so that it would not be impossible to set fire to the roof timbers from the cells; and many of the joints are left from six to eight inches open on the under surface, narrowing up to the top, thereby leaving it a difficult task to properly fill these interstices, which could have been avoided had these stones received a rough jointing, and then placed with the widest face downward. If this had been done, any inequalities on the top surface could then have been filled up with coarse, strong cement. As a general rule mechanics improve by practice, but in this case the rule proves the exception, for the last work done in masonry is decidedly the most inferior." Does this describe the work done by Mr. Bennett and the State after they drove Mr. Jordan away? A. Substantially so.

MR. YOUNG: That was the same architect who required that superior work from Mr. Jordan; while, you see, instead of it costing \$80,000, it cost \$205,000. I want the committee to see the object in driving Mr. Jordan away.

COMMITTEEMAN: In your opinion, what would it cost to perform the work in the same way Mr. Jordan was performing it—to finish the job? If Mr. Jordan would have finished it, by rights what would it cost under the contract? A. Well, I don't know as I exactly understand. Do I understand you to say when Mr. Jordan left, or when he took it first?

Q. What was his contract price? A. \$161,500.

Q. He received how much? A.

MR. JORDAN: I received \$32,000.

COMMITTEEMAN: In what year did Mr. Jordan commence his suit—make his first claim against the State of California?

MR. JORDAN: This is the first claim I ever presented.

Q. Never before?

MR. JORDAN: Never.

ATTORNEY YOUNG: I will explain that to the committee. Mr. Jordan was disheartened and discouraged when he was robbed of his property. When he lost the contract it broke him up and made him a poor man, while he was well situated before that. He has not had a disposition to push any thing since. He is now getting up on his feet again, and gaining courage, and begins to feel that he is again a man in the world; but it came very near ruining him.

COMMITTEEMAN: How long is it since Mr. Jordan lost his contract?

ATTORNEY YOUNG: Since 1879. It was about the middle of the summer of 1879 when they took the contract from him.

THE WITNESS: I think it will probably be well for me to state that Mr. Jordan made a contract with Messrs. Gutenberger & Cooke, of this city, to do the iron work, which they did in a satisfactory manner. I think it was an elegant job.

Q. I will ask you, from your skill and ability, and from the disinterested position you occupied, having been a State officer, whether in your judgment Mr. Jordan should be paid the money that he has expended for labor and material, in building this building, as he claims it? A. Well, I wouldn't be prepared to say that Mr. Jordan might have all that he claimed, but I consider that he has grievances.

Q. I don't mean whether he should have interest or not, but whether he ought to be repaid the money he paid out, and also allowed something for the work he did do? A. I am not in favor of robbing people. I think Mr. Jordan went there in good faith; and I think they vitiated their part of the contract in some instances. I might say to you, gentlemen, that I did everything in my power to have good work done for the State. I have been in Folsom since; I have been in the yard; in fact, I had charge of the stonecutters' department eight or nine months at the prison, and I examined those cells that were built in Mr. Jordan's administration, having been there when they were put up, and I found them to be elegant cells; I consider them as good cells as there are in any prison.

Q. Then, if the State violated its contract, and prevented him from completing his contract, and he expended \$40,000 more than he received, in your opinion he should be paid? A. I think he should be paid. I think the State threw obstacles in his way which were not his fault—that would be my opinion.

#### TESTIMONY OF JOHN L. COOKE.

Sworn.

Examined by ATTORNEY YOUNG: What is your business? Answer—I am an iron worker.

Q. What had you to do with that contract up there? A. I had a contract at the prison under Mr. Jordan.

Q. Now, will you state the manner in which Mr. Jordan was entering upon and executing his contract, and how he was treated by the State? A. Yes, sir; as far as I was concerned—what I know about it. When I first entered into the contract, started of course on the iron work, Mr. Bennett, the architect, seemed to be abusing us—started right in from the

very start abusing us, to get us off the grounds; tried their very best to get us off the grounds.

Q. State how Mr. Bennett acted, so this committee can understand it? A. Well, in the first place he came up there, and he would look around and say that the work was not done properly; sometimes he would say that (he had a cane in his hand)—he would knock against it and say, "This don't look right." I have, many a time, asked him what didn't look right, and he never could make any explanations—he never would make any, but would always say it was not done right. I asked him one time if the State would take the contract if they got Mr. Jordan off—would the State take this. He said, "No; the State will never have it." He said Jordan was no man to do it, was no man to carry out his contract, and never would carry it out; he insisted on that a good many times with different men.

Q. To you and to the men? A. To myself.

Q. Did you hear him at any time make statements that it would be better for all parties when the State got it out of his hands? A. Yes, sir; he stated that to me. He didn't say "when the State got it;" said other parties would have it. He intimated to me that if the Livermore crowd would get it, it would be better for all hands—if the Livermore crowd got the job.

Q. He never promised any express sums of money to them? A. How is that?

Q. You don't know whether he made any promises of money to them if they would secure it for Livermore? A. No.

Q. Did they make monthly estimates on your iron work, and did you get your pay on the monthly estimates? A. Yes, sir. He told me to make monthly estimates, but never allowed me what I made on the prison at all.

Q. How much would he reduce it? A. From \$1,000 to \$1,500.

Q. Without any adequate cause? A. Yes, sir; without any cause at all.

Q. I understand that was on the large estimates? A. Of course. At the first start the estimates were not large, and he didn't take off that amount. The larger estimates were \$1,000 or \$1,500—something like that amount.

Q. Your estimate comprises a portion of Mr. Jordan's estimate, made up by detail? A. Yes, sir; still ours was separate—ours had been separate while Mr. Jordan was there; of course, we got our money of him, and afterwards the State paid us our awards themselves.

Q. How do you account for those underestimates, and those derelictions on the part of the State—how do you account for them? A. Well, I don't know how to account for them more than I think Mr. Bennett wanted to get his own bid in there—his own bids.

Q. Wanted to control it himself? A. Wanted to control it.

Q. Wanted either to do that, or want you to divy? A. Well, he would take a little divy any time I would give it to him.

Q. All architects would do that? A. No; I know architects who wouldn't do it.

#### TESTIMONY OF WILLIS E. DAVIS.

Sworn.

Examined by ATTORNEY YOUNG: Will you tell this committee your connection with that contract and what your observations were in the matter, so far as they related to Mr. Jordan? Answer—Well, Mr. Jordan, at the time he took that contract, was somewhat indebted to my father.

Q. Just state to the committee who you are? A. I am Mr. Davis' son, of Messrs. Davis & Carroll, lime and cement merchants, San Francisco. Mr. Jordan owed my father for material furnished previous to the time he took this contract; and after he had gone on with this work, and he had not been allowed sufficient money for carrying on his work, he became cramped, and could not pay off all his indebtedness, and one of his creditors attached him, and to save time he acknowledged judgment, and I went up there and bought in the property under Sheriff's sale, and took possession of it myself; that is, all the personal property, which included the engines, works, etc., necessary to carry on the work. It amounted to about \$10,000, and which was sold for about \$6,000. Mr. Jordan had been so cramped that he could not raise that \$6,000 to pay off that judgment.

Q. Then they sold the \$10,000 worth? A. He sold \$10,000 worth of property to pay off that judgment. I bought in the property, but under the terms of the contract they said Mr. Jordan could not assign his contract; it was necessary for him to complete it personally. So, of course, it was necessary for him to have these tools, and I made a lease of the tools to him, which included, of course, the derricks, and the personal property, for a certain monthly consideration. So while I remained there in possession of all this property, Mr. Jordan carried on the work continuously while I was there, until finally he was pushed out by the State.

Q. What was your observation, and what were your conclusions as to the cause of Mr. Jordan's trouble? What was it that created his difficulties? A. Well, the trouble commenced—of course the main thing was his not being allowed sufficient pay according to the work that he had done, and the continual trouble with the men. That was brought about by the architect telling them that Jordan could not carry on the work, and through his agents, as we supposed, to work dissension among the men, to cause them to strike and delay the work—make trouble—of course with the object in view of getting him out. Mr. Bennett came to me one day himself and said to me, I had better try and induce my father to drop Jordan; that he would have to be gotten out of that, or that I had better induce him to drop Jordan; that it would be a bad business to continue with him. I can't say that those were the exact words, it is so long ago; but that was the import of what he told me. He wanted me to induce my father to withdraw from Jordan all the time. He at that time furnished him money, because he had not sufficient money at that time to carry him on, on account of these short estimates, and Mr. Bennett was very anxious to have me induce my father to withdraw from it, as another means, of course, of crippling him.

COMMITTEEMAN: It is your opinion that some officer, or officers, of the State, at that time put some obstacles in the way of Mr. Jordan upon that contract? A. Most assuredly—constantly—I could see Mr. Bennett go amongst the workmen and talk to them; of course, I could not overhear him—I would not even try to overhear him; but it was a very common thing for him, when he came up there to make his estimates, to go among the workmen and talk to them. I knew what his object was, doubtless; I strongly suspected, and I watched him, but I could not hear what he said.

Q. Where is Mr. Bennett? A. I think he is in the city—I think so. Of course, that would seemingly be a very unusual thing for an architect to do—to go among the workmen; I could not say what he told them.

ATTORNEY YOUNG: But he did approach you, in fact, and wanted your father to drop Mr. Jordan? A. Yes, sir.

ATTORNEY YOUNG: This Joint Committee found that the architect did discourage him in every way, and tried to break him up.

CHAIRMAN: Have you got any pecuniary interest now in this matter? A. No, sir.

#### TESTIMONY OF DANIEL MCHENRY.

Sworn.

Examined by ATTORNEY YOUNG: What is your name? Answer—Daniel McHenry.

Q. State to this committee what you know about the matter under investigation. What is your business, to begin with? A. I am a stone-cutter by trade; I am not working at it now.

Q. Now you may answer my first question. A. Well, I was foreman for Mr. Jordan while he was at work there, and then foreman afterwards when the State had it.

Q. Well, without waiting for questions, just state what you observed there. A. Well, all I can state is he was going on with that work. We were doing piece work for quite awhile, and was doing it very well, and Mr. Bennett used to come up and tell me to cut it better; that it had to be cut better; that it would never do to cut it in that kind of a way; and I was asking about how he wanted it cut. Well, he said he wanted fine peine-hammered work, and good face, and good joints; and he got so that if there was a plug hole in the stone he would condemn it. We used to have lock faces on the front walls of the cells, and if they didn't extend out, or had any point marks in them, he would object to them; and he would circulate through the men there; he would come up and intimate that Jordan would never get through with the work—could not get money enough; and he paid more attention to finding out whether there were any strikes, or whether the men were dissatisfied, than he did to finding out how much work was done. He would probably not be there more than two hours before he could tell, without making any figures whatever, that Jordan wouldn't have money enough to pay the men.

Q. You say he seemed to be more anxious about the discontent among the men than he was about the accuracy of the work? A. Yes, sir.

Q. I suppose your conclusions were that he wanted to get Mr. Jordan out of that contract? A. Yes, sir.

Q. You became satisfied of that, did you? A. I did.

Q. State what kind of efforts Mr. Jordan was putting forth towards the completion of his contract, and whether he was working at it in good faith. A. Well, he used to do so much, and used to take daily estimates of what we did or claimed.

Q. Was he progressing in a reasonable manner with the work? A. Yes, sir.

Q. If he had been paid by the State, is it your opinion that he could have concluded it in a reasonable time? A. Yes, sir; if he had had a chance to have done the work.

Q. You never estimated what profit he could have made, I suppose? A. Oh, yes; I have. We both have done that together. The Miles work that was left there was supposed to be used there in the cells. It was the cell work that Mr. Bennett seemed to be after all the time. There is where the great expense was.

Q. In your opinion he could have completed it with a reasonable profit in the estimates you have made? A. Yes, sir.

Q. He made certain statements here to the effect that he could have



made \$20,000 on the whole job; do you agree with that? A. To use that Miles stock that laid there?

Q. To do the same style of work. A. To do the same style of work it could have been done. There is no doubt but a fair profit could have been made on it; but he wouldn't let that be used for the kind of work that it was intended for.

COMMITTEEMAN: You were foreman for Mr. Jordan? A. Yes, sir.

Q. And you were foreman afterwards? A. Yes, sir.

Q. How did the work compare in quality—the work done by Mr. Jordan under the contract and the other work? A. Hardly any comparison at all; the ones that put it up used to be quarrymen and hod carriers.

Q. Then I understand you to say that the work was done better under Mr. Jordan's supervision than it was by Miles? A. Yes, sir.

Q. What reason have you got to show us why they should remove Mr. Jordan? Have you any reason? Do you know what was the cause? A. Why Mr. Bennett should remove him?

Q. Why Mr. Jordan should be removed? A. No; I can't tell. I think he must certainly have had an object; a man that would act that way to another must have some object.

CHAIRMAN: Wasn't Mr. Bennett the architect after the State took charge of the work? A. No, sir.

Q. You say the work wasn't done afterwards as well as it was under Mr. Jordan? A. No, sir; it was not.

Q. Didn't he afterwards make the same objections he did before? A. No, sir.

Q. I understand he didn't make any objections to the work done afterwards, yet it was not done so well. Is that the purport of your answer? A. Yes, sir.

Q. No objections were made to it afterwards by Mr. Bennett? A. No, sir; none that I ever heard.

COMMITTEEMAN: When you saw Mr. Bennett talking to the workmen here and there, was it settled in your mind that Mr. Bennett had a job on Mr. Jordan and wanted to oust him? A. Yes, sir. He talked that way to me.

#### TESTIMONY OF MICHAEL MURPHY.

Sworn.

Examined by ATTORNEY YOUNG: What is your name? Answer—Michael Murphy.

Q. You were working on the building under the Jordan contract, were you? A. Yes, sir.

Q. What was your business there? A. I hauled the stone in to the building.

Q. Do you know at the time the first estimate was made how many cells were finished? A. Well, it was a long time ago, but according to my best opinion now, I think there were in the neighborhood of fifty cells.

Q. You think in the neighborhood of fifty cells? A. Yes, sir.

#### TESTIMONY OF DENNIS JORDAN.

Recalled.

Examined by ATTORNEY YOUNG: What is your recollection of the number of cells at the time the first estimate was made? A. My recollection

is that there were about fifty cells finished, and about three cells in course of erection.

Q. Do you know how much Mr. Curlett estimated the cost of each cell? A. He first commenced to figure them by the foot; then afterwards he allowed me in his progress estimate \$256 for each cell.

Q. I wanted that so as to show the falsity of this estimate; there were fifty cells finished at \$256 a cell, yet he only allowed \$4,222, and that would amount to some eight or nine thousand.

#### TESTIMONY OF THOMAS WELCH.

Sworn.

Examined by MR. YOUNG: What was your business up there at the Prison? Answer—I have been a stonecutter, and foreman there part of the time.

Q. Do you know when Mr. Bennett came there to make his first estimate? A. Some time about November.

Q. Do you know the time of the month? Do you know how many cells were completed at that time? A. I could not possibly swear to the exact number.

Q. Well, about how many? A. Well, maybe forty or fifty.

Q. Do you know whether fifty were completed, and three or four partially finished? A. I know that there were somewhere about that number; I could not swear to the exact number. I know there were several that were not finished.

COMMITTEEMAN: Did Mr. Bennett ever talk to you about Mr. Jordan, or his manner of doing work, or making complaints? A. He never spoke to me.

Q. Did you hear others? A. Yes, sir; I heard others speaking.

Q. You were foreman there awhile? A. I was for awhile there.

ATTORNEY YOUNG: Do you support Mr. Jordan's statement in regard to Mr. Bennett's actions, and comments on the stone? A. I do, certainly. Every time Mr. Bennett came there we had to make the work finer.

TUESDAY, February 12, 1887.

Testimony before Joint Committee on Claims, in reference to claim of D. Jordan, continued.

#### TESTIMONY OF HON. THOMAS BECK.

Sworn.

Examined by ATTORNEY YOUNG: In order to save time I will first ask you a few questions, and let you tell what you know about it. You are acquainted with Mr. Jordan here? Answer—Yes, sir.

Q. Do you remember the circumstance of his having the contract to finish the State Prison at Folsom? A. I do, sir.

Q. Do you know about some little difficulties he had gotten into with the architect, Mr. Bennett? A. I remember a good many.

Q. Will you please state to the committee, without my asking questions, what you recollect about those difficulties. You were one of the Commis-

sioners, one of the State Prison Commissioners, at that time? A. Yes, sir; ex officio.

Q. And you were Secretary of State at that time? A. Yes, sir.

Q. Just state to the gentlemen about those difficulties. Here is the report of the State Prison Commission—of the Senate and Assembly—for the years 1880–81, in which they say: “We find that for some reason or other, the architect seemed disposed to place obstacles in the way of Mr. Jordan in the finishing of the contract, often condemning work and requiring it to be removed that had been accepted by the Superintendent, Mr. Duncan, and he often stated to the men working for Jordan, that there would not be money enough coming to him, Jordan, to pay the men their wages at the end of the month, and telling them at the same time that it would be better for them when Jordan should cease work, and the Directors take the finishing of the work into their own hands. To such an extent was this carried, that Mr. Beck, who seems to have been perfectly just and fair toward Mr. Jordan, stated that he, at times, was forced to place himself in the position of seeming to act as the friend of Mr. Jordan, in order to protect him against the architect.”

Q. Do you remember the difficulties that Mr. Jordan had in attempting to fulfill his contract, in relation to the State Prison, on account of unreasonable objections urged by the architect, Mr. Bennett? If so, state what you recollect, beginning wherever you please. A. When Mr. Jordan had the contract with the State to finish the Branch State Prison at Folsom for the sum of \$161,500, Mr. Bennett was the architect and Mr. Duncan was appointed by the State as Superintendent for the State. Mr. Bennett drew up the plans and specifications in the usual way, as specifications are usually drawn up, giving the architect control of the work as it progressed, to judge whether it was up to the plans and specifications or not. In fact there were several specifications providing that the work must be done to the satisfaction of the architect, and it was upon that rock that Mr. Jordan got wrecked. I will just say here to you gentlemen, by way of parenthesis, that I'm an architect myself, and I know what power an architect has in construing specifications. If he is an ugly man he can ruin a contract by exacting unreasonable things of the contractor. While the words, “to the satisfaction of the architect,” are usual, and while it is right under a reasonable man, it is a very dangerous power to give to a man who is not reasonable. I was acting for the State and in the employ of the State, and it was expected that I was working in the interest of the State, and I was; but I considered that I was sitting as a Judge in the matter between the individual and the State, to deal fairly and squarely between the two. Mr. Bennett seemed to be acting entirely one-sided in the matter, and I would take a very positive stand in the matter, because I would not stand and see any man oppressed, particularly a man of my own kind, that had been raised to earn his bread by the sweat of his brow. On one occasion Governor Johnson, who is here present, and Governor Irwin and myself went to Folsom, as we were in the habit of doing monthly. Mr. Bennett was residing in San Francisco, and came up monthly to make his reports. I would state why these reports were made. Under the provisions of the contract the work was to be estimated every month by the architect and the Superintendent, and the amount paid to Jordan monthly as the work progressed, keeping back a certain per cent of the amount until the work was entirely finished. On this occasion, if I recollect right, Mr. Jordan had about sixty feet of the floor of the cells laid—broad slabs of cut stone, I think six by eight feet—at least every stone was the size of a cell, if I recollect right,

with the intention of building the walls on the joints, so there would be no joints in the floor. This sixty feet was laid for the purpose of building these walls on. Four of us went up at the end of the month to pass on this work, and somebody had informed Mr. Bennett, because he didn't notice it himself. He went up with us on this occasion and knew no more about it than we did. Mr. Bennett looked at the floor, and somebody whispered in his ear that the floor was an inch and a half out of level—this sixty feet of floor; it was laid the entire width of all the cells, and was sixty feet in length. Mr. Bennett came up to where Governor Johnson, Governor Irwin, and myself were and made that report, and wanted to know if the Commissioners would stand by him in ordering this work up. I thought it was a very unusual thing to object to sixty feet of stone floor that was an inch and a half out of level, knowing that the very best houses in San Francisco, after two or three years' settling, would be more than an inch and a half, perhaps; and in these cells, which were to be six by eight feet, it would be so imperceptible that the finest architect in the world could hardly determine it. It was very unreasonable that this floor should be taken up, even if it were an inch and a half out of level in sixty feet. However, when we went down there, Mr. Bennett said, “this is the work here, I wanted to see if you gentlemen will order up. I believe it ought to be ordered up and leveled.” Governor Irwin said, “So do I; and I move that that work be taken up and leveled.” He got no response from either Governor Johnson or myself. We both kept quiet—said nothing. He then turned around to me and said, “Mr. Beck, I move that this floor be taken up and leveled.” I said, “Governor, Mr. Bennett came up with us to-day. He knows nothing more about the condition of the floor than you or I do, except what somebody told him. Now, I will not vote for taking up this floor until I know for myself whether it is level or not.” I said, even if I were satisfied that it was an inch and a half out of level, from Mr. Jordan's condition, and the way he has been hampered, and pressed, and harrassed, from time to time, before I should order it up I will see the whole thing in hand; and it wasn't taken up. Another time when we went up, the cells were up the full height without the tops being put on; each top was covered with one slab—just one stone. The walls were up the full height, and when I went in one of the cells there were red marks across it, here and there, all over the walls. I asked what that was for. Mr. Bennett said he had condemned these stones marked with a red cross. The contract called for these stones in these cells to be peine hammered to the satisfaction of the architect. That was the difficulty about it; it said, “to the satisfaction of the architect.” In cutting these stones sometimes half an inch would be taken out of the center of the stone, below the general surface of the stone. So, to use that stone on the front of an elegant building on Montgomery Street or Kearny Street, it would hardly pass; but in the cell, for strength, and such things as that, it was perfectly satisfactory to any reasonable man. He marked these stones to be taken out. That meant, then, to take the whole wall down, because these stones were put in with iron dowels, and was just like one solid stone. He had ordered this done. I said “that will pass muster anywhere. While it is not what you might call a first class job for a granite-stone front on Montgomery Street, it is a first class job for the cells of prisoners—it has got all the requisite strength—and so far as I am concerned I will vote against taking down these walls to take out these stones.” He merely provided that these stones should be taken out, which, of course, meant taking down the entire walls. That was not done. As I said, when I was

before the committee some years ago, my connection in these matters compelled me to appear as Jordan's friend in the matters, as against the State. I had a talk with Mr. Bennett on one occasion, and I told him, "Now, you are unreasonable with this man Jordan in his work. All you want, and all the State wants, is a fair and square job, and Mr. Jordan is doing that kind of work." This was immediately after this affair when he ordered the floor to be taken up. And I said to him when we returned to Sacramento, and were sitting at the Golden Eagle Hotel, "Mr. Bennett, I never want you to place me in that position again; that is a very disagreeable position to place any man in holding the position I do, because it compels me to appear as the friend of Mr. Jordan—your unreasonableness with him. All this State requires you to do is to act fairly and squarely, and exact a reasonable job from Mr. Jordan." Well, there were a hundred other little things that I could tell you about; and although it appeared as if the man wanted to freeze him out, and while Governor Irwin was a fair, square, honest man, yet he had such a feeling of confidence in Mr. Bennett that he was led along by Mr. Bennett. There were many things I would have objected to if I were not placed in that disagreeable position. His order to Mr. Jordan to put on so many men and so much material was unreasonable—material three or four months before it was needed; but I rather chafed at being placed in the position of a friend to Mr. Jordan, and so I acquiesced. So Mr. Jordan was forced to get this material on the ground. He run himself in debt and swamped himself more every day he was in the business. I believe that is all. I would like to have any of you gentlemen ask me some questions if there is anything you would like to know about it.

COMMITTEEMAN: I take it, from the tenor of your evidence here, that it looks like a dirty, contemptible job to break this man Jordan out of the contract, in order to get somebody else in? A. I don't know that that was the object, but it appeared to me to be a very unreasonable proceeding on the part of Mr. Bennett.

Q. I would like to ask if it was not known throughout the State, where this Bennett was known, that that was the character of man generally that he was? A. Well, I don't know anything about that; I could not tell; I only know what he was as I came in contact with him; I haven't heard anything about his reputation, but I know in this business he was very unreasonable, and I often referred to the matter; and while he said the work ought to be done in a first class manner I contended that that meant a first class job of the kind—not a first class job that might be put up on Kearny Street, or Montgomery Street, but a first class job of the kind. He exacted work that would stand the test of a Market Street front—that was the trouble. He exacted better work than was required—better work than the spirit and meaning of the contract ever intended. That was always the trouble I had with him.

Q. Did you level the floor? A. Oh, yes. I forgot to say that in order to satisfy the Governor, and satisfy everybody, I took a 20-foot level and leveled the floor, and found it was about three-eighths of an inch out of level.

Q. In sixty feet? A. In sixty feet. It was as level as any work could possibly be. I did that in the presence of the entire Commission.

# TESTIMONY OF LIEUTENANT-GOVERNOR JAMES A. JOHNSON.

Sworn.

Examined by ATTORNEY YOUNG: You were present on the occasion referred to by Mr. Beck, were you? Answer—Yes, sir. I was present on both occasions mentioned by Mr. Beck.

Q. Without further questioning, please state what you think about the matter. A. Well, I was there at the time of the dispute about the floor. I saw Mr. Beck take the level and go over it, and the result was as he has stated; the work was not disturbed. I was there upon the other occasion, although I was not often there. I was there when these stones were marked on the inside of the cells to be taken out. They were not taken out. There was a great deal of harping about it, and a great deal of talk, and some angry feeling. About the attitude laid to the architect, and his arbitrary manner of exercising his authority, I don't want to say anything about. He may have been trying to force Mr. Jordan out, and he may not have been. He may have thought it was his duty to get the very best work to be got, and if he could not get good work, to discharge Mr. Jordan. I don't know what his object was. I wouldn't like to find any fault with Mr. Bennett, although the result of his administration was to break Mr. Jordan up.

Q. That would have been the result, I presume, with any contractor and such an unreasonable architect? A. I suppose so. I believe Mr. Jordan was not paid 90 per cent of the work as it went on—was not paid 90 per cent of the work as it progressed, was he?

MR. BECK: That was the contract price, but it was held back on many occasions, and the full amount on many occasions was not paid to him.

THE WITNESS: I want to state to the committee, as I was one of the Prison Directors, that I did not live here. They had to hold meetings in Mr. Beck's office or the Governor's office. They held meetings every few days. I never was notified, and attended very few meetings. Besides these two occasions that Mr. Beck speaks of, there was only one other time I visited the prison during the four years I was Director. I used to attend the meetings once in awhile. Well, the result was to force Mr. Jordan to give up the contract. It was ruled, I suppose at somebody's instance, that he should furnish seventy-five men to work, so many barrels of lime, so many barrels of cement, and so forth, and the State did not furnish him the money.

ATTORNEY YOUNG: In corroboration of this witness' testimony, and also of the statement of Mr. Beck, as to the claims being withheld, we will introduce in evidence a written statement of when the work was performed. Work was finished December 26, 1878; it was allowed March thirteenth, and was not paid till May 13, 1879. The work was completed and the estimate made on December 26, 1878, and then, as the evidence showed the other day, instead of it being 90 per cent, it was only about 30 per cent.

# TESTIMONY OF HON. THOS. BECK.

Recalled.

COMMITTEEMAN: How far had the work progressed at the time Jordan was forced to give up the contract? Answer—Well, he had the outside walls pretty near finished, and a large portion of the cells. I don't exactly remember what proportion of the cells, but he had the cells pretty well

progressed. I could not tell the proportion of the cells that were finished at the time he had to give it up.

ATTORNEY YOUNG: Would you estimate he had about half his contract completed, or a little more? A. Yes, sir; a little more.

COMMITTEEMAN: Do you think if he had been afforded reasonable facilities for carrying out of his contract, he could have come out with a profit? A. Well, I think he could, if there had been any favors shown him; that is, if he had received the consideration he was entitled to as a contractor. It was considered by most everybody that talked about it at the time that he could have got out of it with a profit if he had reasonable treatment. Mr. Jordan often came down and said that the per cent was not being paid by the architect, and that he did not make large enough allowances; and it was a great consideration to Mr. Jordan to have this thing paid up promptly, and to the full amount. He complained to almost everybody that these appropriations were not being paid to him.

Q. Did Mr. Jordan, after the work was taken away from him—after he was driven from the work—complain to you about his loss? A. Yes, sir; many a time. He was always speaking about it.

Q. Did he give you any figures in regard to what he would lose by the action of the State authorities? A. I don't think he gave me any figures, but he complained about his losses often, and his unreasonable treatment; but he knew it was unnecessary to talk to me about that, because I knew, as well as anybody did, how he was treated.

Q. You were a member of the Board, were you? A. Yes, sir.

Q. What did you do to relieve him? A. I relieved him on many occasions; at least, I prevented work from being taken down—and it is now standing there—and prevented work from being taken up that was ordered up, or, at least, the motion was made to order it up. Certain work was not ordered taken up, by the efforts I made.

Q. Notwithstanding your efforts to relieve him, still he was damaged? A. Yes, sir. There were a great many things I did to relieve him.

Q. I mean between him and the architect? A. Yes, sir; I saw the unreasonable exactions of the architect. Many a time he would appeal to the Board in this way: "This man has agreed to furnish this work according to the plans and specifications. The specifications call for the very best work, and to be subject to my approval." And he saw fit, on many occasions, not to approve work that I considered good work; and he would often appeal to us, as State officers, to stand by the interests of the State. My answer to these appeals would be that the State required nothing but what was right, and just, and proper; and while he claimed that this was to be the very best work that could be done by a mechanic, I claimed that it was only the best work that could be done for such price. What would be a first class job in a prisoner's cell might not be a first class job on a granite front on Montgomery Street.

Q. Didn't want it polished? A. Not a nice face put on it, in other words.

Q. It would cost \$2,000,000 to build that penitentiary under such circumstances as that.

ATTORNEY YOUNG: In corroboration of this testimony, here is a letter written December 26, 1878:

"DENNIS JORDAN, Esq., Contractor Folsom Branch Prison:

"DEAR SIR: Your communication of this date, informing me of a difference of opinion that has arisen between yourself and A. A. Bennett, archi-

tect, touching the manner in which certain work on the Folsom Branch Prison should be done, and asking me to call a meeting of the Board of Prison Directors, at which you and the architect may be present, is received. Very respectfully,

"WILLIAM IRWIN,  
"Chairman Board Prison Directors."

ATTORNEY YOUNG: The Governor here recognizes the receipt of a communication of that kind from Mr. Jordan, complaining of the very things Mr. Beck has testified to. I ask to file that, and have it marked Exhibit "B." We will now submit the Jordan claim, and ask the committee to report on it at its earliest convenience.

This agreement, made and entered into on this twenty-fifth day of July, A. D. eighteen hundred and seventy-eight, by and between William Irwin, Governor of the State of California, James A. Johnson, Lieutenant-Governor of said State, and Thomas Beck, Secretary of State of said State, constituting the Board of State Prison Directors of said State of California, and in their capacity as such Board of State Prison Directors, and not otherwise, and for and on behalf of said State of California, parties of the first part, and Dennis Jordan, of the City and County of San Francisco, in said State of California, party of the second part;

Witnesseth: That the party hereto of the second part, for the consideration hereinafter named, to be paid to him in the manner and upon the conditions hereinafter specified, does hereby undertake, covenant, promise, and agree to and with the parties hereto of the first part, to execute and perform all the labor and mechanical workmanship, and to furnish and provide all materials, implements, and cartage therefor, or connected therewith, at his own expense, necessary in the erection, construction, and finishing of, and that he will erect, construct, and completely finish the building of the Branch State Prison, at the site conveyed to said State by the Natoma Water and Mining Company, situated near the town of Folsom, in Sacramento County, in said State, the completion of which is provided for by an Act of the Legislature of said State of California, entitled "An Act to provide for the completion of the Branch State Prison at Folsom," approved April 1, 1878; and that he will execute and perform all of said work in strict conformity with the plans and specifications therefor prepared by A. A. Bennett, Architect and Superintendent of said work, signed by both parties simultaneously with the execution hereof, and hereby made a part of this contract, and all the matters and things therein shown or specified are to be furnished, provided, and performed by the party hereto of the second part, the same as if they were herein specifically set forth.

II. Said party hereto of the second part hereby further agrees to commence said work within thirty days from and after the seventeenth day of July, 1878, and to prosecute the said work with all possible diligence and dispatch, and to finish and deliver over the same to said parties of the first part, completed in every part and portion thereof, to the full satisfaction of said architect, and under his direction and superintendence, and as provided for in said plans and specifications, within fifteen (15) months from and after the said seventeenth day of July, A. D. eighteen hundred and seventy-eight (1878), being the day on which the contract for said work was awarded to him.

III. And the said party of the second part does hereby further undertake, promise, and agree that he will forfeit and pay to the said State of California the sum of one hundred dollars per day, as liquidated and settled damages and not as a penalty, for each and every day that the works above mentioned may remain uncompleted or undelivered after the day last above mentioned and specified for the completion and delivery thereof, which sum or sums shall and may be deducted and retained from any moneys or payments then due, or to become due, to said party of the second part under or by virtue of this contract, and which sum or sums are and shall be deemed to be in addition to, and not in place or substitution of, the ten per centum on warrants authorized and required to be retained by the State Treasurer by section eight of an Act of the Legislature of said State entitled "An Act to regulate contracts on behalf of the State in relation to erections and buildings," approved March 23, 1876, and to be forfeited to said State on the conditions in said last mentioned section specified and as hereinafter provided.

IV. And the party hereto of the second part, hereby agrees to and with the parties of the first part, that he will not suffer any lien to be created upon the said building or land, either by himself or by any laborer, mechanic, subcontractor, or material man, who shall perform labor or furnish materials for the erection of said building, and does hereby, for himself, and for all persons who might be entitled to claim a lien under him, waive all right to liens upon the said premises, or upon the buildings so to be erected by him, and does hereby, for himself, and all persons under him, or that may be in his employ, waive and renounce any agency or authority conferred upon him by statute, by virtue of being the contractor aforesaid, in the employ of the parties of the first part.

V. And the parties hereto of the first part, as such Board of Directors and not otherwise, for and in consideration of the full and faithful performance by the party of the second part of all the stipulations and agreements hereintofore covenanted and agreed to be performed by him, do hereby agree to pay to said party of the second part the sum of one hundred and sixty-one thousand five hundred dollars (\$161,500) at the times and in the manner and on the conditions hereinafter mentioned, out of the moneys appropriated for the completion of said Branch State Prison by the beforementioned Act of the Legislature of the State of California, entitled "An Act to provide for the completion of the Branch State Prison at Folsom," approved April 1, 1878.

VI. And it is mutually agreed and understood by and between the parties hereto, as follows:

*First*—That the walls of the whole of said Branch Prison structure shall be erected, and all other granite work thereon shall be constructed and done, with stone to be taken from the granite quarries situated on the land so conveyed to the State by the Natoma Water and Mining Company, situated near the Town of Folsom, in Sacramento County, above mentioned.

*Second*—That on the first day of each month, or within five days thereafter, the said architect shall estimate the value of the work done, including materials furnished and labor performed, during the preceding month, which estimate shall be made with reference to the whole sum for which this contract is let to, and taken by, said party of the second part; but that no materials shall be considered as having been furnished within the meaning of this contract (nor shall they be included in said estimate), until the same shall have actually entered into and become a part of said building.

VII. And it is further mutually agreed and understood by and between the parties hereto, that the moneys herein agreed to be paid to said party of the second part shall be paid at the times, in the sums, and upon the conditions following:

*First*—That said party of the second part shall, as soon as practicable after the making of the monthly estimates above provided for, be paid ninety per centum, and no more, of such estimated values, and that the remaining ten per centum thereof shall not be paid until the final completion of said contract, but shall be retained as additional security for the performance of this contract on the part of said party of the second part, and be forfeited to the State of California in the event of failure on his part to conform in good faith to all the terms and conditions of this contract, as provided by the said Act of the Legislature, entitled "An Act to regulate contracts on behalf of the State, in relation to erections and buildings," approved March 23, 1876.

*Second*—That nothing shall be paid on, or for materials furnished or delivered on the ground for said work, until such materials shall be actually used and incorporated into and become a part of said Branch State Prison building.

*Third*—That said party of the second part shall not be entitled to receive any payment on account of this contract until he shall furnish to said parties of the first part, satisfactory receipts, vouchers, or releases, showing that he has paid to the mechanics, artisans, workmen, and laborers, who may have been employed by him on said building, all sums due to them, and each of them, from him, for work or labor done or performed by them on said building, up to that time, nor until the said architect shall have given his certificates that such payments are due, nor until the parties of the first part shall be satisfied that there are no liens upon said building for work done or materials furnished for the same, and no outstanding indebtedness, for or on account of which, any lien or liens might attach thereto, or be placed thereon.

VIII. And it is further mutually agreed and understood by and between the parties hereto, that said parties of the first part may, at their pleasure, make any change in the work or materials embraced in or provided for by this contract, in the manner and upon the conditions provided by said last mentioned Act of the Legislature, approved March 23, 1876.

In testimony whereof, the parties hereto have hereunto subscribed their names this twenty-fifth day of July, A. D. eighteen hundred and seventy-eight, in triplicate.

Witness:

WILLIAM IRWIN, Governor,  
JAMES A. JOHNSON, Lieutenant-Governor,  
THOMAS BECK, Secretary of State,  
Board of State Prison Directors.  
DENNIS JORDAN.

ATTORNEY-GENERAL'S OFFICE, July 25, 1878.

I, Jo Hamilton, Attorney-General of California, do hereby certify that the above and foregoing contract has been submitted to me, and has been found by me to be in accordance with the provisions of an Act entitled "An Act to regulate contracts on behalf of the State, in relation to erections and buildings," said Act approved March 23, 1876.

JO HAMILTON, Attorney-General.

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SACRAMENTO, January 12, 1880.

I hereby certify the within and foregoing to be a full, true, and correct copy of a paper on file in this office, relating to the Folsom Branch State Prison.

D. M. KENFIELD, Controller.

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT, }  
SACRAMENTO, CAL., December 26, 1878. }

DENNIS JORDAN, Esq., *Contractor Folsom Branch Prison* :

DEAR SIR: Your communication of this date, informing me of a difference of opinion that has arisen between yourself and A. A. Bennett, architect, touching the manner in which certain work on the Folsom Branch Prison should be done, and asking me to call a meeting of the Board of Prison Directors, at which you and the architect may be present, is received.

Very respectfully,

WILLIAM IRWIN,  
Chairman Board Prison Directors.

SACRAMENTO, May 13, 1879.

State of California (by Board of State Prison Directors) to D. Jordan, Dr.

To amount of allowance hereto annexed.....\$2,259 60

Order No. —. OFFICE BOARD OF STATE PRISON DIRECTORS, }  
SACRAMENTO, May 13, 1879. }

To Hon. W. B. C. BROWN, *Controller of State* :

You will please draw a Controller's warrant on the Treasurer of State, in favor of D. Jordan, for the sum of \$2,259 60 in payment of the above account, and payable out of the appropriation made under the provisions of "An Act to provide for the erection and maintenance of a Branch State Prison near the town of Folsom," approved March 30, 1874.

Approved April 1, 1878. By order of the Board.

F. R. HOGEBROOM, Secretary.

No. 1683. OFFICE OF THE BOARD OF EXAMINERS, }  
SACRAMENTO, Cal., March 13, 1879. }

The annexed account, for \$2,259 60, is approved by the Board of Examiners for the sum of \$2,259 60, payable out of the Folsom Branch State Prison Fund.

WILLIAM IRWIN, Governor of California,  
THOS. BECK, Secretary of State,  
Board of Examiners.

Board of State Prison Directors to D. Jordan, contractor, Dr.

To additional 12 cents per foot allowed on 9,480 feet of rubble work, estimated December 26, 1878, at 15 cents per foot, \$1,137 60, the same to be deducted from other work as follows: From each of thirty windows, \$15, total, \$450; 3 cents per foot from 22,000 feet flagging, total, \$660. To 15 cents per foot extra on 7,840 feet of rubble work, estimated December 26, 1878, at 15 cents per foot, \$1,122. Total, \$2,259 60.

A. BENNETT, Architect.

STATE CONTROLLER'S OFFICE, }  
SACRAMENTO, December 20, 1886. }

I hereby certify that the foregoing is a true and correct copy of claim of D. Jordan now on file in this office, and for which a Controller's warrant was issued on May 13, 1879.

JOHN P. DUNN, Controller.  
Per F. J. DUNN, Deputy.



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REPORT

OF THE

SENATE COMMITTEE ON FISH AND GAME.

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## REPORT.

MR. PRESIDENT: Your Committee on Fish and Game, to whom was referred the memorial from the Legislature of the State of Nevada, relative to the depositing of sawdust in the Truckee River by residents of the the State of California, respectfully submit the following report: That in conjunction with the Assembly Committee they visited Truckee and Reno. At Truckee they were met by a delegation from the Nevada Legislature. A joint meeting was held, Senator Jones of this State presiding.

Three reasons were submitted to your committee why the further depositing of sawdust in the Truckee River should be stopped, viz.:

*First*—Its presence in the river tends to destroy trout and food fish.

*Second*—It is conveyed by the waters of the river through almost the entire length of the State of Nevada, and through ditches and canals used for irrigating purposes upon valuable farming and grazing lands and spreading over the surface thereof, tends to render them almost valueless and unavailable for agricultural purposes.

*Third*—It renders the water of the river unfit for drinking and domestic purposes, particularly in the summer months, and sickness and death has resulted to the people of Nevada from its use.

At Truckee testimony was taken principally upon the amount and character of the sawdust deposited in the river, and its injury to the fish.

The testimony showed that forty million feet of lumber was cut annually, in the cutting of which is produced about seven million feet of sawdust, which passes into the river.

Above the mills, on the river, and up as far as Lake Tahoe, an abundance of fish are found, while below they are scarce.

It was developed in the testimony taken that the most serious cause of complaint was the injury to the health of the people of Reno and vicinity, caused from the use of the water of the Truckee River, which is their principal source of supply for domestic purposes.

At the urgent invitation of the Nevada delegation your committee visited Reno for the purpose of hearing the statements of the leading physicians and prominent citizens of that place.

Upon our arrival at the last named place, a meeting was immediately called, and addresses were made as follows:

R. H. Lindsay, a leading attorney of Reno, said:

"All that the people of Nevada ask for is simply justice from the State of California, and thus stay the hand of death that is daily taking away our little children. It is absurd to say that the depositing of sawdust in our river does not deteriorate its quality. Our physicians are here to-night and will state to you that the depositing of it in the water makes it impure and unhealthy. I call attention to the dreadful disease of typhoid fever which afflicted during the past summer the inmates of Bishop Whittaker's seminary. The conclusions formed by our physicians as to the cause of this affliction, comes from the water. There are numbers now down with sickness, the cause of which is traced to the same cause, viz.: the impurity of the water caused from sawdust deposits. A person standing on our river bridge can notice these deposits in the bed of the Truckee

River. On the whole line of the stream, from the mills to its mouth, can be found the deposits of sawdust. Upon the broad ground of humanity, for the protection of our homes, and the lives of our people, comprising a community of between four and five thousand, we ask legislative protection from this evil."

Mr. Lindsay was followed by Judge W. W. Boardman, who said:

"I cannot give all the data and all the terrible results produced by this sawdust evil. We claim that we are entitled to the purity of the water; anything done to make the water impure is an evil which we think we have a right to complain about. In my judgment, the running of sawdust into the Truckee River has rendered the water unfit for domestic purposes—so much so that the Nevada Legislature is now contemplating and considering a proposition to obtain a new supply for the State institutions at Reno."

The following statements were made by leading physicians of Reno, the first called being Dr. Bergstine, a graduate of the University of the Pacific, who said:

"The matter of sawdust in the Truckee River affects us as follows: It is a fact that the decomposition of vegetable matter in water is a great producer of disease. The decomposition of the sawdust in the Truckee River, in my mind, is a source from which disease is produced. Large numbers of dead fish have been found at various times in the Truckee River. The sawdust settles in the gills of the fish which causes their death. At various places along the bed of the Truckee the deposit of sawdust is from three to four feet deep. The cause of the fever epidemic among our people last summer, in my judgment, came from the impure water caused by the sawdust deposits in the river."

In reply to a question by Senator Jones, as to whether he had ever made any chemical analysis of the water, the doctor said:

"I have not, but my judgment in this matter is from observations. I notice that people about Reno who used well water were not afflicted by the epidemic, although surrounded by more favorable causes of disease, while the people surrounded by the best health regulations, and most favorably located, who use the river water, have been afflicted by the epidemic."

In answer to a question by Assemblyman McGowan, regarding impure waters, he stated:

"It is an acknowledged fact that impure water is one of the most serious causes of disease. I know of nothing in the sawdust itself that would make water impure. It is the decomposition of the sawdust in the water that makes it impure and breeds disease."

Dr. Dawson, a graduate of the Medical University of California, said:

"During the past year, and for several years past, we have noticed that the water from the river was impure. Many of our families have abandoned the river water, and are now using well water for domestic purposes. An epidemic broke out in Bishop Whittaker's seminary, and I made a personal examination of the sewers, water-closets, sinks, and every place about the institution, to discover the cause of the epidemic. As a result of my examination, I came to the conclusion that it was the water; I noticed a peculiar odor about the water; I left a glass of water to settle over night, and in the morning I discovered sediment in the bottom of the glass. The deposits of sawdust in the bed of the river during the summer months ferments and gives off a slimy substance, which contaminates the water, and even renders the atmosphere impure, which, in my judgment, is the cause of disease."

"I have practiced in Reno since the year 1875, and my observations dur-

ing these years of practice leads me to the conclusion, beyond any doubt, that this is the cause of disease among our people.

"The water taken from the river opposite the town is noticed to be the same as the water taken from the reservoir. They both give off an offensive smell. As the water lowers in the river, and the warm weather comes on, the water becomes more impure and offensive to the smell."

Dr. S. Bishop, a graduate of the Physio-Medical Institute of Cincinnati, Ohio, said:

"In 1864, a gallon of water of the Truckee River showed but twenty-four grains of impurities. This was considered pure water. It is different now. It is admitted that impure water is a cause of disease. Before sawdust commenced to be deposited in the river, we had no typhoid fever. The disease has become and is becoming more frequent every year. I am satisfied that the sawdust renders the water impure, and has been and is the cause of disease."

Dr. Lewis, of Long Island (N. Y.) Medical College, said:

"In the first years of my practice here, there was little or no fever. It has become more frequent every year. When the disease first commenced to afflict our people we laid the trouble to other causes, but we have been forced to the conclusion that the water rendered impure from the sawdust is the main cause of the disease."

C. C. Powning, United States Surveyor-General of Nevada, said:

"We ask that a few mill men be prevented from contaminating the main and largest river of Nevada. We have repeatedly urged and petitioned the California Legislature to take some action, and they have as yet failed to notice our petitions. In the bed of the river from Lake Tahoe to Truckee there is no sawdust, but from Truckee to Reno and to Pyramid Lake there is a continual deposit from one to three feet of sawdust. We ask that the matter be not delayed longer."

Attorney-General Alexander of Nevada, said:

"This is a friendly conference. We meet to abate, if possible, the trouble between Nevada and California on a friendly basis. The question is whether four or five men running mills on the Truckee River can impair the health of the people of Nevada? Will not the people of California require these men to so use their property as to not interfere with the neighbors of your State. Because these mill men claim that it is convenient for them to deposit the sawdust in the river, will you acknowledge that as an excuse or reason why they can render our water impure? We ask that the Truckee River shall be allowed to run unimpaired from its source to its mouth, and we ask you to acknowledge that the water of this river is as much ours as yours."

After listening to the statements made from the above named gentlemen and a number of others whose statements were all corroborative, your committee cannot come to any other conclusion than that our sister State has cause for grievance, and we believe it is the duty of the Legislature of California to pass such laws as will give relief to the citizens of Nevada. The health of the citizens of that State is of much more importance than is the saving of a few dollars to the lumber mill men who are located on the Truckee River in this State.

In this connection we would most respectfully call the attention of the State Board of Health to the matter and request them to make an investigation as to the effect on the health of the people who use water in which sawdust has been placed.

Your committee would also recommend that the Senate act at once on Senate Bill No. 228.



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REPORT OF SENATE COMMITTEE

ON

Chinese and Chinese Immigration.

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## REPORT.

SENATE CHAMBER, SACRAMENTO, February 10, 1887.

MR. PRESIDENT: Your Committee on Chinese and Chinese Immigration beg leave to report as follows:

Your committee, on Saturday, the fifth instant, proceeded to the City of San Francisco, there to see for themselves the nature of the Chinese evil in all its deformity, and to take the testimony of persons best informed as to the condition and status of the Chinese race in our midst, with a view to propose measures looking to the removal of this disturbing element from our State.

Your committee, first of all, visited Chinatown in that city, to verify, with their own eyes, the statements so often made on the platform, and in the press. They found the reality to exceed all description. They were inclined to exclaim, "The half was not told!" No other city in our Union has such a plague-spot. Perhaps no other civilized city in the world is afflicted with anything approaching it. It is a disgrace to the city, the State, the nation, and to civilization. In all respects, it is most abominable and intolerable. There is no excuse for it. Our fathers never intended that the great republic should be made the stamping-ground of such a concentration of crime, vice, filth, lechery, disease, and slavery. We cannot particularize in this report. We cannot trouble you with more than a summary of what we saw, smelled, tasted, and heard—yes, tasted, for the odors of Chinatown are strong enough to be tasted.

Here, within about four full blocks, are found about thirty thousand people. For thirty years China has dumped all it would upon our shores, all its refuse, male and female; as also, some able, healthy, and perhaps, well-ordered laborers. For thirty years, the best, the lucky, the capable ones have returned to China, their pockets filled with our gold. All the dregs have remained with us. All the incapable, the idiotic, the unfortunate, the diseased, the criminal, the vicious, the outcasts, have remained with us. China does not want them. They have no means to go home. They remain with us, a legacy, but certainly not "a thing of beauty nor a joy forever." But there they are, thirty thousand men, women, and children. The men, the most degraded slaves on earth. The women, slave prostitutes, on a lower level than our language can describe. The children, the product of the most promiscuous miscegenation on earth. There they are, foreign to our race, language, manners, and laws. They have no conception of our morality, and no respect for our laws. The moment you step into their domain, China rules, and the Republic is lost. They live under the laws of China. The Six Chinese Companies rule them, and the highbinder is the real Sheriff's officer. Our police and Courts are regarded by them as a grievous oppression, to be evaded, avoided, and resisted, whichever is the most practical, for the time being. We found here nauseous odors, filth, extreme poverty, ignorance, superstition, and degra-

dation in no other place to be found. A crowded condition, from four to ten in the space that one American would regard as essential to his health and comfort. A total absence of furniture, such as comfort and decency would seem to require in either kitchen, or parlor, or bedroom. In fact, every room is all three, and for a crowd, where two seem impossible.

The men, with all the stolid dullness and routine of slaves, moving in dozens as one man, with none of the instincts or inspiration of freemen—celibate slaves. The women, confessedly slaves and prostitutes, bought, sold, mortgaged, held, whipped, imprisoned, and transferred daily, in this free land, where slavery is forbidden in the Constitution. The children of these women show their paternity. They are of all nations, from almost pure white to the brand of Africa. Few are born in wedlock. Nay, some are stolen, even from white people! Children are a property, held as such, raised as slaves, bought and sold, and otherwise held under claims unknown to the statutes of California, or the laws of our country. Prostitution is openly practiced, in a manner so notorious and shameless that in no city in our Union would it be tolerated for one moment from any other than these Chinese. It is a confessed fact that they reek with loathsome disease, and have been known to impart the same to children of ten or twelve years.

Gambling seems to be a national vice with them. It is universal and irrepressible. It is in full blast in every shape—lottery, tan, and all other forms. They barricade against the police to prevent surprise. We saw it. You can see it. Why, we ask, do the police not suppress it?

The opium den is no less destructive. It is found all over Chinatown. It would seem as though they all indulge. And not content with that, they are diligent in the induction of others into the accursed habit. The dens are everywhere, and we are assured that white men, women, boys, and girls are continually made victims of that deadly drug. From this charnel house of depravity and disease the Chinese cook, nurse, waiter, and domestic servant of all work issues in the morning, after stewing all night, to the duties of his office in the mansion of his white employer. The fact of thirty thousand men, including but three thousand women, would itself suggest unheard of vice. But when it is such men, such women, and such children, such crowded conditions, such usages and laws, did Sodom itself ever witness such scenes as Chinatown portrays?

Your committee found evidence of all these things; saw them, ripe, plenty, palpable, and scarcely making an effort at concealment. Our wonder was, where are the police? where are the Courts? where the Sheriff? the detectives? Alas! they are all there. Do they know of these things? Without doubt, if they are not blind. Why then are they not suppressed, prosecuted, stamped out? This is something your committee could not fathom, and no one in San Francisco could find out for us. It is said that the Chinese Companies buy the upper offices and Courts, and the privilege of defying our law. Your committee is slow to credit so sweeping a charge. But the fact remains that the police do not see, the Prosecuting Attorney does not pursue, the Courts permit the most flagrant cases to be continued; and these abominations go on, and we can give no reason why.

We are constrained to commend this neglect to your attention, and to recommend such legislation as will inspire them with a higher sense of duty, and arm them with ample powers to correct these terrible abuses. The people of California are of one mind on this great issue, and the official staff of the State should take notice and plant their feet on the same side.

Your committee next proceeded to hear testimony as to Chinese immi-

gration, and the powers and duties of the State in relation thereto. H. L. Knight, of San Francisco, was presented before your committee, and among other things said:

"Few questions are more vital to the people of California than this of Chinese immigration. It will soon absorb all others, unless it can be settled as the people desire. Your party platforms promise, and you are all personally pledged to do all that the State may do, under the Constitution of our great country, to rid our State of any further influx of Chinese, and to induce those who are here to go hence and come no more. You have promised that you will inquire and find out what the State may do, and apply it with a fearless hand. Should this inquiry reach down to the foundations of our Government, and be the means of reminding the central power that our States have some reserved rights, and our people other reserved rights, which are not at the mercy of Washington, and be the means of better defining our Federal relations, and putting some restraints on centralization, you will not shrink from it. It is a dogma of one of the great political parties that States have certain rights which the Federal Government is bound to respect. There has been a tendency of late to forget this axiom. In many ways we have had good reason to complain, and the sooner a better definition is attained the better it will be for us all. The Union is the strongest and the most secure when the just rights of all concerned are admitted and respected.

"There is no question on which the people of California will yield you a more cordial support in demanding all that is right for the State than this of the Chinese. If you can show that Washington has assumed too much, gone too far, and overdone its utmost power in this Chinese treaty; that it is unauthorized, illegal, void, and should for that reason be set aside; the people will support you, and give you the palm and prestige you so much desire. I hope to convince you that the State has a plenary power over this Chinese immigration, and all treaties to the contrary are void, because unwarranted by the terms of the Constitution, and in defiance of some of its plainest stipulations. I hold these truths to be self-evident, or capable of an absolute demonstration:

"*First*—That all sovereign States have ever held, and do now proclaim, the right to exclude from a residence in their domain all persons obnoxious to them, and at their pleasure to banish, expel, and forbid the return of all such persons.

"*Second*—That when the armies of the King of England left these United States, each State at once took upon itself an absolute sovereignty, with all the rights pertaining to the same.

"*Third*—That when the Union was formed, each State yielded up to the Federal Government certain of these sovereign powers, and forbade the States to exercise certain others.

"*Fourth*—As to these powers, ceded and forbidden, the States were deprived of them; but as to all others, the States retained them intact, as at the first.

"*Fifth*—That the Federal Government could take no other or further powers without an amendment to the Constitution, ratified by three fourths of the States; and never by inference, implication, or construction.

"*Sixth*—That the power to regulate immigration was never granted to the Federal Government, and never forbidden to the States, and therefore remains with the State intact.

"*Seventh*—That the power to regulate naturalization could not include immigration, as the lesser can not include the greater; and had it been

so intended, it were easy to have said naturalization and immigration. It was not said, and the fair inference is that it was not intended.

"*Eighth*—That the power to regulate commerce stands in the same condition precisely; and if intended to include immigration would have said so.

"*Ninth*—From the fact that it was stipulated in the Constitution that citizens of the United States should be free to travel and settle in any State they might please, it is a fair inference that none others could be forced into a State without its permission. If the United States could inject whom they please, why this grant as to citizens?

"*Tenth*—True, no State has ever seemed to use this right of exclusion; but a State loses no power by non-user. There originally, never ceded away, it is there yet; and rests in the State of California, as in all other States.

"*Eleventh*—The treaty-making power could neither add to nor diminish the powers of the General Government. Only an amendment could do that, approved by the President, Senate, and House, and ratified by three fourths of the States.

"*Twelfth*—The treaty-making power is an inferior power to this, vastly inferior, and surely could not do what required all these.

"*Thirteenth*—The Constitution reads thus: 'This Constitution, Acts of Congress made in pursuance of it, and all treaties, shall be the supreme law of the land.' The treaties must be in pursuance of the Constitution. These words flow over to the treaty clause of necessity. The sense requires it. Reason and justice require it. The security of liberty requires it. The best sense of all mankind demand it. What! forbid Congress to pass any Act 'not in pursuance of the Constitution,' and then clothe the President and Senate with a *carte blanche* to set aside all! Never! Our fathers never meant such a thing. The States would never have ratified such a Constitution. We would not now grant such a power. The Republic and liberty are at an end if any treaty can be made, and held valid, that is not in harmony with the Constitution.

"*Fourteenth*—The regulation, then, of immigration, is with the State always, except as to citizens of the United States who expressly reserve to themselves the right to go to any State and settle therein, even against the will of the State; persons eligible for naturalization, seeking the country for that purpose, and in their period of probation, and commercial persons, permitted to reside and domicile for commercial purposes, and no other.

"*Fifteenth*—Any treaty pretending to admit any other than these persons, to any State of this Union, is therefore void, because it violates a reserved right of the sovereign citizen that he alone should go from State to State at his pleasure; it violates the reserved right of the State in this, that it forces a Chinaman into the State, whereas, the State only agreed to accept citizens, and it violates the Constitution of the country in this, that it assumes a power never granted to the entire Federal Government.

"In this regard a joint resolution of the Senate and Assembly, setting forth these facts—calling for their consideration—and a revise of all our foreign treaties affected thereby, would be highly commendable. At the same time the Attorney-General might be directed to make a case, force an issue in the Supreme Court of the nation, and let all men know that the people and State of California know their just rights and dare maintain them.

"The time is ripe, the whole nation is ready, should the Supreme Court take adverse ground, to carry the matter to the Congress and Senate, and declare that all treaties must be abrogated that pretend to force upon any

State of this Union such cheap, servile, slave labor as that of the Chinese now flooding and ruining this State. Bills might be prepared in accordance with this view, forbidding the admission of even one more Chinaman, under any circumstances, to reside and make his living here in competition with our people.

"In view of the fourteenth amendment to the Constitution of the United States, those who are here with lawful right, must have the equal protection of our law. But we can number them, give them certificates of their presence; and after that date catch and punish, and deport all found among us who have no certificate, on the ground that they have stolen over our borders without permission, and invaders and frauds have no rights we are bound to respect. Our State should at all times be a great highway for all the people of the world, of every race, color, religion, or condition, to travel, and reside for a season, for their health, pleasure, amusement, education, or on any special mission or eccentric enterprise; for none to settle down, to live and make a living among our people, unless the State makes them welcome, or they come to us on the plea of citizenship or eligibility therefor."

Let us suppose now that all the foregoing is a mistake, not true, not logical, not law, not practical good sense, that the treaty is valid and the supreme law, and the State and the people have no rights, but under the shadow of the Federal Courts, what then remains to us? What can we do to invite the absence of the Chinese, and discourage their coming?

Much! The Chinese are naturally a criminal people, so far as our laws are concerned. Should our statutes be faithfully and fully executed by our officials, our country would not be tolerable for them, and most of them would soon speed away, never to return. We have others born here, or raised here, who would naturally fall into line with us, rather than return to China. But it is notorious that our laws, so far as the Chinese are concerned, are a mere farce. By some potent alchemy, they have the ear of the police and the prosecuting officers. They escape where white men would be seized with avidity, and prosecuted with vigor. Our laws forbid slavery in any and every form. "John" is a great slaveholder, as well as a slave. Make it a felony for any person to claim or pretend to claim any other person as a slave, and punish every act to support such claim, and all who aid in its enforcement.

We are proud of our laws, which demand equal protection for all. "John" is much given to despise all that, to defy our law, to adjudge cases on Chinese law, and to enforce the same by threats, penalties, and even death. We might surely prosecute all such offenders against the majesty of the Republic as felons. Let us have a law to do so, and root them all out. This would touch their great companies, and perhaps drive them all from the State. We have a restriction Act against "John" coming to our State, except through a regular channel. We are told that "John" steals over our borders, and otherwise swears himself in, and enters through false papers. And though he come as a merchant, a student, the nephew of his rich uncle, once in, we find him a ragpicker, or a day worker. We want a bill that at any time within two years, any person found guilty of said stealing in, or false swearing in, shall be deemed a felon, punished and deported. This would greatly discourage many of those who slip so easily through the Custom House and Court.

We would also recommend a law to give all Chinamen convicted of crime and sentenced to less than five years, the option of at once returning to China, to come no more. The Chinaman is a slave and a slaveholder. His form of slavery is varied, and based on various conditions and pre-

tenses. It is feudal, family, and chattel; and may have still more forms that we do not comprehend. But it all flourishes in Chinatown, and is the basis of a great deal of crime, strife, litigation, and trouble. Our Courts are often used to enforce these claims. Why should we not forbid the whole of it, and make a law that it shall be a felony for any person to claim and exercise control over another in any manner or form unknown to and unauthorized by the laws of California, and a misdemeanor for any person to aid, abet, or be an accessory to the same. It is known that women and children, even white ones, are held and being raised as slaves for sale, and it is infamous that such things should be in the land of the free and the home of the brave. Let us suppress crime and slavery, and we shall have done much to expel the Chinese.

Your committee were much impressed with the testimony given before it, and in particular the ideas advanced by Mr. Knight; and while not having considered the legal questions presented by Mr. Knight sufficiently to pass judgment thereon, your committee believes that he has suggested matters that are worthy of very serious consideration.

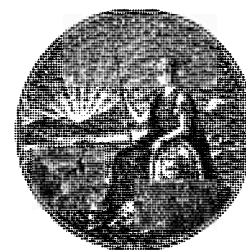
J. LENAHAH, Chairman.  
J. ROTH.  
B. V. SARGENT.  
P. J. CRIMMINS.  
H. C. GESFORD.  
W. H. PATTERSON.  
E. B. CONKLIN.

## REPORT OF SENATE COMMITTEE

ON

# River, Harbor, and Coast Defenses.

TWENTY-SEVENTH SESSION, 1887.



SACRAMENTO:

STATE OFFICE : : : : P. L. SHOAF, SUPT. STATE PRINTING.  
1887.

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## REPORT.

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SACRAMENTO, February 17, 1887.

MR. PRESIDENT: Your Committee on River, Harbor, and Coast Defenses beg leave to submit the following report:

By appointment, at ten o'clock A. M., February 5, 1887, the Committee on River, Harbor, and Coast Defenses met at the Palace Hotel, San Francisco, Major-General O. O. Howard, United States Army, commanding the Division of the Pacific, and Colonel George H. Mendell, Corps of Engineers, United States Army, in charge of fortifications, and was taken by these gentlemen to visit the various fortifications about San Francisco Harbor.

The first point visited was Fort Mason. The fortifications here consist of two earthen barbette batteries (batteries, in which the guns are mounted so as to fire over the top of the parapet), hastily constructed during the civil war for temporary service. They are armed with obsolete ordnance, and in their present condition could form no part in the defense of the harbor.

At Alcatraz, the next point visited, the works are of a more prominent nature, but unfinished. Four 15-inch Rodman smooth-bore guns are mounted, as are also a few minor pieces. Since 1876 no work has been done on these fortifications, and they would form little more than a protection to the torpedoes which might be planted in the harbor.

At Angel Island are three earthen barbette batteries, built over twenty years ago. They were intended for temporary service, and are now in ruins; their ordnance is obsolete, and their gun carriages were long since condemned.

At Lime Point and its vicinity are three barbette batteries, well located, but unfinished. There is but one gun mounted in but one of these batteries.

Fort Winfield Scott is a brick casemated structure of three tiers, and platforms on top for mounting guns in barbette. It was commenced in 1853, and intended to withstand the navies of that day. There are in this building thirty-two 10-inch Rodman, sixteen 8-inch converted rifles, some few Columbiads, and about fifty-four other guns of obsolete pattern. The best gun in this fort—the 8-inch converted rifle—has, when fired with its service charge of powder, only a penetration of eight inches of wrought iron at one thousand yards. A modern war vessel could lie out of range of the guns of this fort and with a few shots knock the entire structure to pieces, and render every one of the guns unserviceable.

On the hill, back of Fort Scott, is an earthen barbette battery, left unfinished in 1876. There are mounted in it eleven 15-inch Rodman guns. Their carriages are so old that the guns cannot be fired with their service charges, hence even their maximum effect is not attainable.

In the forts in the harbor are stored some torpedo cases, but these are not ready for use, nor is the number sufficient to properly plant the harbor.

The committee here quotes from the report of the Board on fortifications or other defenses, appointed by the President in 1885: "The coast fortifications, which in 1860 were not surpassed by those of any country for efficiency, either for offense or defense, and entirely competent to resist vessels of war of that period, have since the introduction of rifle guns of heavy power, and of armor plating in the navies of the world, become unable to cope with modern iron or steel-clad ships of war, far less to prevent their passage into ports destined for attack. Prior to 1860, the largest gun was the 10-inch Rodman, the energy of whose projectiles was some two thousand foot-tons. The forts of that period were more than competent to resist its projectiles; it should form, therefore, no subject of reproach because at present they cannot withstand the shock of twenty thousand, thirty thousand, and forty-five thousand foot-tons, without mentioning the new guns, which expect to deliver sixty-one thousand foot-tons of energy."

In the past ten years, foreign nations have spent millions of money in perfecting heavy ordnance, so that now we would have to protect San Francisco against guns which will send over a ton of metal from the deck of a vessel nine miles away.

Modern war vessels are protected by iron armor too thick for any guns we have to penetrate.

During these years in which the conditions of defense have totally changed, Congress has made no appropriations for the construction of fortifications capable of withstanding modern ordnance.

From 1875 to 1881 only one hundred thousand dollars was appropriated yearly for the repair and preservation of all the fortifications of our country. This was increased in 1881, to one hundred and seventy-five thousand dollars yearly, and was found to be insufficient. So that our defenses are in worse condition to-day than they were eleven years ago.

San Francisco, the second harbor in importance in our country—has property subject to ransom, amounting to three hundred and fifty millions of dollars; the navies of England, Germany, Italy, Japan, and Chili, have vessels that could lie out of range of the guns of our forts and shell our city to destruction if their demands were not paid—received three thousand four hundred and thirty-five dollars in 1885, and 1886, for general repairs, and a special allotment of three thousand dollars for some particular repairs. Since July, 1886, she has received nothing. Recommendations for permanent defenses have been made, which include armored turrets, floating batteries, torpedo boats, mortar batteries, submarine mines, and modern ordnance of from eight inches to sixteen inches caliber. These defenses require time for their construction, and in addition to this, we are dependent for our armor and heavy ordnance upon foreign establishments.

We again quote: "The workshops of Europe, with all their facilities for turning out this material (heavy ordnance and armor), are now fully occupied by the demands upon them. Experience has shown that the few experimental orders already given from this country are filled only after long delays; and it is impossible to estimate the time required for the delivery of the large quantities we urgently need. Moreover, war would at once put a stop to such importations, and leave us helpless in the emergency.

On the other hand, if our Government, instead of building vaults to store away the nation's money, would place one or two of our navy-yards in such a condition that instead of relying upon England for our cannon we could have all the facilities at home, not only giving employment to some four thousand or five thousand of our countrymen, encouraging home

industries, promoting the nation's wealth, but also rendering our defenses independent of other countries. San Francisco may be shelled by vessels lying in the open sea two or three miles off the Cliff House, and there are no guns in this country of sufficient size and caliber to effectively meet this attack.

The committee finds that the fortifications of San Francisco are out of date, and inadequate for the defense of its harbor; that since 1876 no moneys have been appropriated which could be employed to improve these fortifications; that there is not a single modern gun on this coast, and no means of procuring them except by purchase abroad; that the gun carriages are of old style, and not adapted to modern warfare; that torpedoes might be planted in interior channels, but that no means of exploding or protecting them exist. Even if heavy modern guns were in the east, from their great weight it would be impossible to transport them here over existing railroad bridges and trestles; and that if the defense of this harbor was now undertaken with full supply of means, it would be impossible to complete the projected system of defense, including the armament, in less than three years. San Francisco is now subject to bombardment from the open sea, without power of defense; her channels are open to the advance of a hostile fleet, and there are no means at hand to make serious resistance.

It is not the purpose of the committee to suggest plans of defense, but to call attention to our condition. We are totally unprotected, and it will require three years at least to protect us. While foreign nations have been experimenting with ordnance and armored defenses to withstand it, the United States have done nothing. Although it is impossible to predict what future improvements will bring forth in the way of ordnance, we can emphatically state that present improvements have rendered utterly worthless defenses projected years ago.

It is time, then, to arouse ourselves and ask for that protection which Congress owes us. The people are taxed in order that Congress may pay the debts and provide for the common defense and general welfare of the United States. Our defense has not been provided for, and yet there is complaint that no way is known to use the money flowing into the Treasury.

Our fortifications are years behind those of the other great nations of the earth, and yet Congress, until recently, has remained inactive and heedless. We are all apt to overlook the vast expenditures of life and money which our wars have cost us, and fasten our attentions upon the results obtained. This past policy has made our military history a succession of blunders, to prevent a recurrence of which we must accept and act upon the maxim, "In peace prepare for war."

Your committee recommend that our Senators be instructed, and our Congressmen be requested, to immediately urge such appropriation as will protect our harbors against all foreign invasions.

B. F. LANGFORD, Chairman.  
P. J. CRIMMINS.  
J. R. SPELLACY.  
F. J. PINDER.  
J. D. BYRNES.

PHILIP S. FAY, Secretary.





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REPORT

OF THE

SENATE COMMITTEE ON MILITARY AFFAIRS.

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## REPORT.

SENATE CHAMBER, SACRAMENTO, }  
February 26, 1887. }

MR. PRESIDENT: Your Committee on Military Affairs, having, in conjunction with a similar committee from the Assembly, visited and inspected the various armories, militia, ordnance, and accouterments of the following companies, stationed at San Francisco, Sacramento, Stockton, San José, and Los Angeles, beg leave to present the following report as the result of their investigation, and to offer such recommendations as are deemed absolutely necessary and proper for the advancement of the military department of the State of California.

On Friday evening, February fourth, we visited the various companies comprising the Second Brigade (stationed at San Francisco) in the following order:

The first place we visited was the armory of the Second Artillery Regiment, located at No. 120 Grove Street, where we found the regiment, under command of Lieutenant-Colonel Wilder, drawn up in single file front, across the floor, ready to receive us. The companies of this regiment which appeared were: Company "G," Captain James Reinfeld, had sixty-three men in line (within a dozen of full ranks); Company "F," Captain P. Loring, had fifty men present; Company "E," Captain John Flynn, had forty-two men present; Company "D," Captain George Bigley, had thirty-seven men present; Company "C," Captain A. Huber, had sixty men present; Company "H," Captain William Waters, had sixty-eight men in line; Light Battery "A," under command of Captain Sime, had forty men in line. The companies named made a fine appearance, and their armory appeared in a clean and orderly condition.

Thence we visited the armories of Companies "C," "F," and "G," of the First Infantry Regiment, at 324 Post Street. Company "C," under command of John E. Klein, had fifty uniformed men in line; Company "F," Captain R. Loughery, sixty-one men; and Company "G," seventy men, all of whom made a fine appearance.

We next visited and inspected the armory and accouterments of the Third Regiment, corner of New Montgomery and Howard Streets, where we found the various companies drawn up in full ranks, almost to a man, in the following order: Company "A," Captain Robert Cleary; Company "B," Captain Thomas Drady; Company "C," Captain Henry Levy; Company "D," Captain J. O'Connor; Company "E," Captain Miles McCormack; Company "F," Captain James F. Smith; Company "G," Captain Daniel J. Driscoll; Cadet Corps, Captain S. J. Ruddell. The men drilled in excellent order, and with great precision of the various movements, under the direction of Major Thomas F. Barry.

The remaining companies of the First Infantry were next visited at their armory on New Montgomery Street, where we found the regiment in

the following order: Company "B," Captain Burdick, had forty-eight men in line; Company "D," Captain Jensen, had fifty-one men in line; Company "A," Captain McMenomy, had fifty-three men in line; Company "H," Captain H. P. Bush, had forty-eight men in line.

The last place visited was the armory of the "San Francisco Hussars," the only cavalry company in the city, located on Minna and New Montgomery Streets; here fifty-five men, under command of Captain C. C. Keene, made a very creditable appearance.

This closed our visit and inspection of the militia in San Francisco; and we next directed our attention to the brigades located in the various other counties throughout the State, as follows:

On Thursday evening, February 10, 1887, we visited and inspected the First Artillery Regiment of Sacramento, under command of Colonel T. W. Sheehan, at their armory, corner Sixth and L Streets. The ranks were almost full, and more men would have been in line had there been a sufficient supply of presentable uniforms. The companies that participated were "A," "B," "E," and "G," of Sacramento, and Company "F," of the Town of Woodland, fifty in number, under command of Captain Curson. The men appeared neat and orderly, but your committee took special notice of the worn out condition of their uniforms, and the almost useless state of the muskets.

On Friday evening, February eleventh, we visited the armory of the "Third Brigade," with headquarters at Stockton. The companies of this brigade are Company "A," fifty-two men, under command of J. B. Douglas; Company "B," forty-nine men, under command of J. J. Nunan. With the exception of the worn out condition of the uniforms, the regiment appeared in an orderly condition.

On February twelfth we visited the "Fifth Infantry," comprising one company (Company "B,"), forty-four strong, under command of Captain Albert K. Whitton, located at San José. Here, also, we found the uniforms in the same condition as aforesaid—much worn and soiled—and the muskets entirely worn out and almost unfit for use.

On Sunday, February twentieth, we directed our visit to the southern part of the State, and inspected the militia stationed at Los Angeles, viz.: "Seventh Infantry Battalion," commanded by Major William H. Russell. The companies comprising this battalion are Company "A," A. B. Chapman in command, of forty-seven men; Company "C," forty-seven men, under command of M. L. Starin. After a close inspection we found the uniforms in a dilapidated and threadbare condition, and the guns old and unfit for use.

This concluded our visits, and after a thorough investigation of the equipments, etc., of the various companies aforesaid, your committee desire to make the following report and recommendations relative to the National Guard of California. We found everything in excellent condition, the property of the State well taken care of, and the discipline of the troops to be such that justly merits their highest commendation. On the whole, the following regiments of the National Guard of California, and their officers, deserve great praise and recognition from the State: Second Brigade, Brigadier-General Wm. H. Dimond; First Brigade, Brigadier-General John R. Mathews; Seventh Infantry Battalion, Major William H. H. Russell; and Third Infantry Regiment, Major Thomas F. Barry, whose efforts and endeavors have always been in behalf of the National Guard.

In fact, we believe that the National Guard of California (in point of numbers, discipline, and soldierly bearing, drill, and general efficiency) can compare favorably with any similar organization in the United States. A

great drawback, however, to the complete efficiency of the Second Brigade is a want of suitable armories.

The companies, in place of being scattered about (here and there) in different and unfit armories, as they are at present (some not even having the necessary or suitable drilling accommodations), should be in some centrally located and properly constructed armory, owned by the State; and, in view of this fact, your committee has carefully considered the matter, and deem it would be for the best interests of the State, through the present Legislature, to make sufficient appropriation for the erection of a suitable building, as aforesaid, in those places where a number of companies are located. As it is at present, in San Francisco the greatest expense of the various companies is for "armory rent," and hence if the State had an armory, the allowances made to companies could be accordingly decreased, and this reduction in the allowance would, in a few years, more than fully compensate the State for the construction and erection of a "State Armory;" therefore, in the opinion of your committee, the construction of the same by the State would not only be a benefit to the various commands, but would also greatly decrease the expenses of the military department. The armories, as at present located, are scattered, and in case of riotous disturbance, which is always possible, the fact that the arms, uniforms, equipments, etc., of the militia are stored in different buildings throughout the city, would make safety very insecure.

Your committee were struck with the shabby and threadbare condition of the uniforms of most of the companies that appeared, and also took special notice of the worn out and almost useless condition of the muskets. Upon inquiry, it was learned by your committee, that owing to the insufficiency of the State appropriations, the companies in question were unable to procure new uniforms; and to do so they would be obliged to assess themselves in order to provide a supply of uniforms, which in the judgment of your committee should be provided by the State. Many excellent and most desirable young men would join the ranks were they not deterred by the expense attendant upon the purchase of said uniforms, and we earnestly suggest and urge the importance of the Legislature acting favorably in behalf of the National Guard for sufficient appropriation to uniform and equip their troops; such action would infuse new life and greatly increase enlistments; and it seems but mere justice to the men, that the State should relieve them from the expense of buying clothes simply used in its service.

In connection herewith, your committee further desire to say that there are at the present time about forty organized companies in the National Guard, the maximum number fixed by law. It is the opinion of this committee, that, in order to make the National Guard of California more effective, and to have it second to none of the militia of the Eastern States, an increase of ten additional companies in different parts of the State should be made, which would greatly enhance interest in military matters, and dispel any sectional feeling of jealousy that may exist.

The great usefulness of a State National Guard has already been sufficiently demonstrated, not alone in our own State, but in many of the States abroad. It serves as an aid to civil power, or as a police or military force in an emergency (always at a moment's notice, ready and willing to respond for duty on a call by the authorities), and public safety of our State demands that we foster and encourage the system of citizen soldiery by furnishing all the means necessary for its advancement.

In conclusion, your committee desire to say that the importance of a well ordered and efficient body of citizen soldiery in the State of California

nia cannot be overrated, and no doubt will command the assent and support of all who give to this subject any consideration.

Senate Bills Nos. 16 and 120, relative to the subjects treated on in this report, in relation to the National Guard of California, meet with the approval and indorsement of your committee, and they respectfully recommend and urge their immediate passage.

Respectfully,

D. J. McCARTHY, Chairman.

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REPORT

OF THE

Senate Committee on Education.

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## REPORT.

SENATE CHAMBER,  
SACRAMENTO, February 1, 1887. }

MR. PRESIDENT: Your Committee on Education, to whom leave was granted to visit the State University, and the State Normal School at San José, submit the following:

Your committee visited the University at Berkeley, and met a cordial reception from President Holden and the heads of the several departments. In the short time allotted to our examination, we visited the Departments of Agriculture, Mechanics, Mining, Civil Engineering, Chemistry, and the College of Letters. As a whole we are able to commend the general management of this State institution, and believe the various departments to be in charge of able and experienced professors. The University is still in its infancy, and the great purposes of its organization are scarcely felt, yet it is preparing young men and young women in that technical and advanced education which will enable them to become leaders in the economic development of the great resources of the State.

We can especially commend the Agricultural and Viticultural Departments as of unusual merit, and which are destined to reach with their results into every part of the country. The experimental tests made, and the information disseminated by means of bulletins, compensate many fold for the endowment which this department receives.

We find many departments only partially equipped with apparatus, but the Regents have gone as far as the appropriations would permit.

The Museum and Chemical Laboratory are both crowded for room. The Botanical Garden is an important feature and might profitably be greatly extended. And the same might be said of the Observatory and Meteorological Department. The prominence of this State institution, and the plan upon which it has been organized, and the results to be expected therefrom, suggest that, financially, the University should be liberally endowed with a permanent annual income, and not rely solely upon the pleasure of State Legislatures in making appropriations.

### STATE NORMAL SCHOOL.

Your committee visited the Normal School at San José. We found President Allen and a full corps of instructors busy training teachers for school-room work. Permission was given the committee to examine the school-room works; also, the magnificent Normal School building, and the financial account for the past two years. We find this institution well managed, and heard no cause of complaint.

Herewith we append a short outline of Prof. Allen's report to your committee: "The total number of pupils in attendance is seven hundred and one. Of these, five hundred and forty-two are students of the Normal School proper; forty-five are in the Preparatory Department, and one

hundred and fifteen are in the Training Department. All students applying for permission to attend the Normal are requested to sign a statement that they desire to fit themselves for teaching, and also bind themselves to teach school after leaving the institution. The Preparatory Department is of a more recent creation. There were many students, we found, who would come from a long distance, and when examined for admission would fail in one or perhaps two branches, or, it might be, would not be quite sixteen years of age. These are now received in the Preparatory Department, and, as the law directs, are charged a tuition fee of \$30 a year until they are admitted regularly into the Normal proper. The Training Department, consisting of three grades, is where the students of the Senior class are trained to teach. Each member of that class is required to teach five months during the year, and this is as much a part of the Normal course as that of studying and reciting lessons. And in granting diplomas, the record in the training school is equally as important as that of the class-room. In many cases it is more so; for every year we are compelled to deny diplomas to two or three members of the Senior Class, whose scholastic averages are excellent, but who strand in the Training School. These often go out and teach one, two, or three years, then return and satisfy us of their ability to properly conduct a school, when the diploma is given. The five hundred and forty-two students are divided into fifteen classes, the number of each class varying from thirty to forty-seven, and in one class reaching as high as fifty-six. Once a week—usually on Saturday afternoon—all the classes are given special instructions in the art of teaching. Each year we are devoting more and more attention to this essential branch of the work."

Respectfully submitted.

GESFORD, Chairman.

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## ACCIDENTS

ON

## STREET CABLE RAILROADS.

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## ACCIDENTS ON STREET CABLE RAILROADS.

January 4, 1887.

Shortly after four o'clock yesterday afternoon, as car 58 of Sutter Street line was on its way to the ferry, it collided with a truck which was standing on the track near Battery Street. The front dashboard was badly smashed, and the passengers badly frightened.—[Daily Report.

January 8, 1887.

A dummy on Sutter Street ran into a truck near Dupont Street yesterday afternoon. The conductor instead of remaining on the car and applying the brakes, jumped off to avoid danger.—[Daily Report.

The horses attached to a Polk Street car ran away, and two female passengers were thrown down while trying to escape from the car. One had her chin cut.—[Daily Report.

January 11, 1887.

Eight A. M. At the corner of Geary and Dupont Streets, dummy 10 of the Geary Street line collided with car 13 of the Turk Street line and broke the pole.—[Daily Report.

January 12, 1887.

About five o'clock this afternoon, as dummy 9 of the Sutter Street road approached the engine house, west bound, the gripman failed to let go the cable at the right time. The grip struck the bumper with great force, breaking it in pieces and smashing the windows in the car. A lady passenger was thrown to the ground by the force of the collision and seriously injured, while two others were badly shaken up.—[Daily Report.

January 13, 1887.

About nine o'clock last night, car 6 of the Geary Street line, at the corner of Taylor Street, ran into an old man who was crossing the track. He was picked up and conveyed to the doctor's office, where the wounds on his head were dressed.

January 14, 1887.

At eight P. M., car 15 of the Sutter Street line was stopped on Post Street, near Polk, by the failure of the gripman to catch the rope when starting. Before he recovered the cable, dummy 3, car 3, came down Polk and ran into car 15, smashing the dashboard and breaking the drawbar and windows of 15 car. The headlight on the dummy was also smashed.

January 15, 1887.

About eleven o'clock, Saturday night, the grip on dummy 21 of Sutter Street, was broken, near the corner of Polk. Its removal caused a short delay.—[Daily Report.

Sunday, January 17, 1887.

Another grip was broken about noontime yesterday by the bumper in front of the company's office on Sutter Street. Several ladies, who were on the dummy when the collision occurred, received quite a lively shaking up and were badly frightened.—[Daily Report.

January 18, 1887.

As car 13 of North Beach and Mission was turning into Kearny Street, about eight o'clock this morning, it was struck by dummy 10, on the Geary Street road, and a hole a foot square knocked in the side panel. The passengers in the Kearny Street car, however, received an unpleasant shaking up.—[Daily Report.

January 19, 1887.

Yesterday afternoon dummy 33 of the Sutter Street line ran into the bumper in front of the office, throwing one man off the dummy and giving a number of lady passengers a lively shaking up.

At three o'clock and thirty-five minutes, this afternoon, dummy No. 2 ran into the bumper opposite the Sutter Street office, throwing one man out upon the cobblestones and severely injuring him. A lady who was sitting in the car was thrown against the window, breaking it, and cutting her face. Several windows were broken in the car.—[Daily Report.

January 20, 1887.

As dummy No. 1, on the Geary Street line, was coming in from Lone Mountain, at two o'clock yesterday afternoon, the gripman failed to slacken speed as a sand wagon was coming in front of him. The dummy ran into the vehicle, receiving some damage to the dashboard and railing. Fortunately nobody was injured.—[S. F. Chronicle.

About seven o'clock and thirty minutes, last evening, a Larkin Street dummy, going north, ran into an east-bound Howard Street car, at Howard Street, so completely wrecking it that repairs had to be made before it could be taken to the shops. The Howard Street car had the right of way. But the Larkin Street gripman, when he saw it crossing his path, did not slacken the speed of his train.—[S. F. Chronicle.

A Pacific Street car ran away on Polk Street, between Jackson and Pacific, about four o'clock, because the men in charge did not know how to manage the brake. The passengers were much frightened.

A new Geary Street gripman ran his dummy into a carriage belonging to Mrs. Pierce, of 710 Pine Street, yesterday morning, at the corner of Dupont Street, taking every spoke out of one wheel.—[S. F. Chronicle.

January 24, 1887.

On Saturday evening a Geary Street dummy ran into the switch at Kearny Street, smashing the grip and disabling the dummy.

At two forty-five o'clock a Larkin Street dummy failed to slacken speed when approaching McAllister Street, though the conductor of the latter line stood on the road bed holding up the depression lever, to allow his train to pass. Seeing the Larkin Street dummy running into him, the conductor dropped the lever, and it struck a lady passenger on the leg,

inflicting a severe flesh wound. She was taken into a drug store, at the corner of Birch Avenue and Larkin Street, and Dr. Soule dressed her wound, which he hopes will not prove dangerous.—[S. F. Chronicle.

January 31, 1887.

There was a number of accidents on Sutter Street yesterday. Early in the morning, a Larkin Street dummy collided with a bumper, and lost a grip. It was taken in for repairs.

About five o'clock in the evening a Sutter Street dummy struck the bumper in front of the company's office with great violence. A couple of ladies were thrown to the pavement, and received some bruises and scratches on their faces. About the same time, a dummy ran into a buggy at the intersection of Ninth and Mission Streets, throwing out the occupants, J. Lutz and Caspar Redmur, but not seriously injuring them. A crowd gathered, and some shouted "Hang the gripman," whereupon that individual drew a pistol. The crowd used no other weapons than words, however.—[S. F. Chronicle.

December 23, 1886.

At four o'clock p. m. a butcher wagon was crossing Geary into Kearny, when 15 of the Geary Street line ran into it, hurting a lady and child on the dummy and throwing the driver of the wagon to the ground. At nine o'clock and thirty minutes Geary Street dummy No. 10 ran into North Beach car No. 13; broke the side in.

December 30, 1886.

As a train was approaching the turntable at Central Avenue the gripman failed to let go the cable and the dummy ran into the turntable, smashing the grip and throwing the gripman down and hurting his hand, and injuring two ladies.

January 18, 1887.

This morning at nine o'clock and thirty minutes Geary Street car dummy 13 ran into a Fourth Street car; knocked the whole end out.

December 17, 1886.

A green driver let car No. 9 loose on Polk Street, west of the company's office, and it ran down to Polk Street and off on to the cobblestones. A number of ladies who were in the car were badly shaken up.

At two p. m. dummy 14 of Sutter Street ran into car 9 of the North Beach line, badly damaging the North Beach car and completely turning the dummy around, and breaking it so that it had to be taken to the shop for repairs.

December 20, 1886.

At three o'clock and thirty minutes, a Larkin Street car ran into a piece of iron which was against the Turk Street track, breaking the grip, several panes of glass, and injuring a lady and a policeman.

December 24, 1886.

At five o'clock, one of the green gripmen on the Larkin Street line failed to stop his car at the Market Street crossing; a Market Street car came along and ran into the Larkin Street car, completely wrecking it.

December 16, 1886.

At four o'clock and forty-five minutes, a dummy was run into the switch at Sansome Street, destroying the grip and stopping the cable for twenty minutes.

At five o'clock and twenty minutes of the same day, another dummy ran into the switch and completely smashed the grip. The street had to be dug up so as to get at the grip.

December 18, 1886.

At one o'clock P. M. dummy No. 4 of the Sutter Street road ran into car No. 11 of the Omnibus line, and smashed the windows and woodwork of car No. 11.

At eleven o'clock and thirty minutes, a gripman ran his dummy into the switch at Sansome Street; after considerable trouble it was pulled from its position badly damaged.

December 18, 1886.

Ten P. M. dummy No. 14 of the Sutter Street line ran into a North Beach car, badly damaging the step, and injuring the railing of the dummy.

The car which ran away on Post Street, near the office, on the seventeenth, ran into a bakery wagon, badly injuring the driver of the wagon.

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REPORT

OF

Assembly Committee on State Prisons.

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## REPORT.

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*To the honorable Assembly of the State of California:*

The following is respectfully submitted to your honorable body as the result of our investigation of the affairs of the State Prisons of this State, with some suggestions but no reflection on the discipline and management adopted by the officials at the two prisons.

Owing to the limited amount of money in the "Jute Revolving Fund" for the purchase of raw material, it was deemed advisable by the Board of Prison Directors in May, 1886, to dispose of the manufactured goods on hand in order to continue operations in the manufacture of bags. This transaction was a loss to the State, but the Directors had no alternative except to dispose of the goods or close down the jute mill. By increasing the appropriation for the "Jute Revolving Fund," no such loss will occur again to the State. Your committee, in their visit through the various departments of the prisons, closely inspected each and every department.

We would respectfully suggest that the manufacture of doors, sash, and blinds be discontinued, as it comes in direct competition with free labor, and, as a consequence, has greatly depressed that industry to the detriment of free labor in this State, and your committee would recommend that it be closed down within ninety days.

The furniture department has also been run to the detriment of free labor, as it entered into direct competition with that branch of industry, but we are pleased to state that this department has almost suspended work.

The manufacture of jute is the only branch of industry at which convicts can be employed without coming in competition with the honest free labor of this State, but your committee would respectfully recommend that the labor of convicts not employed in the jute department be utilized for the benefit of other institutions drawing appropriations or aid from the State.

Your committee would also recommend the manufacture of boots, shoes, and clothing, to supply inmates of other institutions drawing aid from the State. We believe that this would be a saving of about forty per cent to the State.

We beg leave to call your attention to the unsafe condition of some of the old prison buildings at San Quentin. The balconies and stairs leading to the cell buildings are in a dilapidated condition; the roofs of the cell buildings are very much in need of repair; the building over the front gate is fast going to decay, and is liable to fall at any time, and destroy both life and property. The bill asking for an appropriation for the repairing of those buildings has received our unanimous indorsement.

When your committee visited the San Quentin and Folsom prisons, the prisoners, without a dissenting voice, expressed the most kindly feelings toward the officers in charge, and no complaints of cruelty or injustice were made, though ample opportunity was afforded them.

Your committee would call the attention of this honorable body to the necessity of a reformatory school for the youthful criminals. At San Quentin, in particular, very many boys under eighteen years of age are exposed to the society of hardened criminals within the prison walls. We would suggest that a State Reformatory School be erected at Folsom, for the youthful criminals. This would incur but a small expense to the State. The Warden could act as Superintendent of the school, and we believe that it would be the means of redeeming a great many youthful offenders.

Your committee would respectfully recommend that the Board of Prison Directors be empowered to appoint competent agents in the different agricultural districts for the sale of jute bags, said agents to furnish bonds for the faithful discharge of their duties.

Your committee would also suggest that the stone quarry at Folsom and the brickyard at San Quentin be worked hereafter exclusively for the improvements of all State institutions, and institutions drawing aid from the State when brick and stone are used, and we recommend that a competent person be appointed by the Governor to superintend the erection of said buildings.

Your committee would also call the attention of your honorable Assembly to the necessity of a building for the criminal insane. They are confined in a damp, unhealthy portion of the cell buildings, and we earnestly recommend the erection of a suitable building for this purpose.

We find that Warden Shirley has earnestly applied himself to the duties and the business pertaining to his office, and that he has ably and honestly administered the same.

Also, that Warden McComb has efficiently, honestly, and faithfully discharged the duties connected with the trust reposed in him.

J. W. ATHERTON, Chairman.

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REPORT OF ASSEMBLY COMMITTEE

ON

STATE LIBRARY.

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## REPORT.

ASSEMBLY CHAMBER, SACRAMENTO, March 9, 1887.

MR. SPEAKER: Your Committee on State Library respectfully state that they have examined into the affairs of the State Library from April 6, 1882, to the present date (which is the period of the present Librarian's incumbency), and present the following report: Your committee, having learned that there were public rumors affecting the integrity of the Librarian, and intimating that his administration of the affairs of his office was dishonest, have examined as minutely as possible into the management of this department of the Government; they have examined the books, records, and papers in his office; have required the Librarian, the Trustees, the Clerks, and such other persons as your committee believed possessed any knowledge of the administration of the affairs of this bureau, to appear before them, and have examined them touching the entire administration of the affairs of the Library.

Your committee, after making such investigation, would state that they find all moneys drawn by the Librarian accounted for by receipted vouchers now on file in his office, and shown in his cash book. We find there has been no defalcation of any of the public moneys, and the properties of the Library are in good condition; but, while the committee thus exonerates the Librarian from any accusation of having appropriated to his own use any of the public moneys, they feel it their duty to state that they find his method of administering the financial duties of his office to have been very lax and unbusinesslike. They find that on November 27, 1885, he drew the sum of one thousand three hundred and seventy-three dollars and twenty-five cents to pay a bill for books purchased in St. Louis; that he did not at once pay said bill, but delayed the same until January 4, 1886, when he paid seven hundred dollars; March tenth, when he paid three hundred dollars; May twenty-second, when he paid two hundred dollars; and September twenty-seventh, when he paid the balance remaining due, of one hundred and seventy-three dollars and twenty-five cents. The Librarian states that this money was kept by him in the safe in his office, and denies that any part of such moneys were used by him.

It was impossible for the committee to discover whether this statement was untrue; but while this public money may not have been used for his own private purposes by the Librarian, yet by pursuing such a course he had it in his power to so use it without authority of law permitting him to so use it, or even to keep it in his possession. We severely reprehend the action of the Librarian in this matter, and cannot too severely condemn this reckless and unlawful control of the public funds.

We further find that the purchase for which said one thousand three hundred and seventy-three dollars and twenty-five cents was drawn from the Controller was ordered, not by the present Board of Trustees, but by their predecessors. We therefore exculpate the present Board from any want of diligence or circumspection in supervising the conduct of the Li-

brarian in the above matter, but we have reason to believe that during the administration of the present Board the payment of several other bills of amounts varying from twenty-five dollars to six hundred dollars, have been delayed for upwards of three months after the money to pay them has been drawn from the Treasury, and that such moneys were improperly kept in the possession and under the sole control of the Librarian.

Otherwise we find that since the present Board have been in charge, the supervision of the expenditures of the Librarian has been reasonably careful, and that they have properly attended to the trust reposed in them. We further find that none of the deputies or other employes of the Library were or are chargeable with any act of omission to fully perform all their duties, or were aware of the negligence of the Librarian to make the above mentioned payments. We believe that section two thousand two hundred and ninety-two of the Political Code, providing for the Board of Trustees, should be so amended that the members of the Board should be required to hold meetings of the Board at least once each month, and that the members should be allowed mileage in coming to and returning from such meetings, and that there should be also allowed the sum of ten dollars per diem for attending at such meetings. Without such allowance the members cannot be expected to come from a distance to attend these meetings, at their own expense, and as a fact they do not all do so. It is often difficult to get a majority of the Board together, and for that reason, a minority of the Board is often obliged to transact the business of the majority.

This is not right; a bureau of the government having the control of upwards of fifteen thousand dollars to its credit, and of such a large and important trust as this, should be managed by Directors, who personally will attend to the duties of the office; but if required to do this at their own expense, the Library will suffer in the future as it has in the past. From the fact that the Directors who reside away from Sacramento have not attended the meetings of the Board with any regularity, we find meetings at which a majority were present have not been often held. This has required the Librarian to go to San Francisco to see the absent members, and get their approval of his official acts. This has often resulted in their being but an imperfect report of the proceedings of the Board, and such report is oftentimes insufficient to ascertain at what dates the several accounts were audited and ordered paid. We would call the attention of the Board of Trustees to this fact, and advise that the Librarian's books should show minutely the several dates when each lot of books is received, when each account is audited and ordered paid, and the exact dates when the accounts are paid, and the precise amounts paid, and we would suggest that the record, and all other books of the Librarian, should be required to be promptly written up, or in case of failure, that they cause the Librarian to be promptly removed. We further suggest, that, pursuant to subdivision six, of section two thousand two hundred and ninety-three of the Political Code, the Board of Trustees, and not the Librarian, should draw from the State Treasury the moneys belonging to the Library Fund, and further, that such moneys should be deposited in some solvent bank in the City of Sacramento, to be named by the Board, to be drawn upon only by check signed by the President of the Board and countersigned by the Librarian, and that all bills ordered paid should be paid by checks drawn upon the moneys deposited as aforesaid, or by drafts purchased by checks so drawn.

*Second*—We would further report that we find vouchers duly filed, numbered, and receipts for all moneys paid out, and find a balance of cash on hand of forty-eight dollars and forty-five cents. The Library Fund is in

good condition, there being on hand in the State Treasury the sum of fourteen thousand three hundred and thirty-nine dollars and sixty-one cents. Said fund exists by virtue of section two thousand three hundred of the Political Code. A comparison of the prices paid for books purchased with the catalogue prices shows a general discount of from ten to thirty per cent, of which the Library has received the full benefit. Purchases have been generally made of firms within the State, but no firm has had the exclusive benefit of the patronage of this department.

*Third*—The Library consists of sixty-three thousand two hundred volumes, and are well arranged and easy of access. In the general department we are pleased to note that late additions and outstanding orders indicate a tendency to secure works of immediate interest to those engaged in the economic industries of the State. Works on horticulture, viticulture, irrigation, mechanics, and similar subjects, form a good proportion of new works.

The accessions to the Law Department have been relatively greater than in the General Department, because in the former, in addition to usual purchases to keep up current series, and the large numbers of law publications constantly received in exchange, unusual purchases have been made in an attempt, very largely successful, to fill up incomplete sets of foreign reports and periodicals and session laws of the various States, while in the latter, purchases have been partially suspended until the catalogue is completed.

During the past two years, there has been completed by the Librarian a catalogue of books in the Law Department. In typographical finish and binding it is most excellent, while in subject-matter, it is at once accurate, convenient, and comprehensive. A comparison of it with catalogues of other law libraries is highly gratifying, showing as it does not only the superiority of the work itself, but the greater completeness of the Library. This catalogue we find, after a very careful inspection, will be of much greater value to the lawyers than any similar catalogue of which we have any knowledge.

The very large number of cross references, the elaborate method of abbreviating the names of reporters and text-book writers, as well as the system adopted of showing the various publications of laws, digests, reports, and journals of the United States, States, Territories, and foreign countries, will, in a reasonable degree, shorten and facilitate the labors of those who come from all parts of the State to pursue their researches in the very elaborate Law Library of the State.

We feel it our duty to especially compliment the Librarian upon this valuable production.

A catalogue is now in process of completion in the General Department, which, when completed, will be a most valuable addition thereto. The Librarian has also in contemplation a much needed index to the Supreme Court Records of the State, comprising some fifteen hundred volumes, a labor which the press of other work and want of sufficient assistance has unavoidably delayed up to this time. The cataloguing, indexing, and other work laid out by the Librarian has very materially increased work in this department.

Respectfully submitted.

J. A. WILCOX, Chairman.  
CHAS. O. ALEXANDER.  
A. M. LAWRENCE.  
G. W. KNOX.  
W. D. MORRIS.



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REPORT OF SELECT COMMITTEE

IN RELATION TO

ALLEGED ERRORS IN ENGROSSMENT

OF THE

GENERAL APPROPRIATION BILL.

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## REPORT.

ASSEMBLY CHAMBER,  
SACRAMENTO, CAL., March 10, 1887. }

MR. SPEAKER: The select committee appointed by the Assembly to ascertain what causes produced two errors in the engrossment of Assembly Bill No. 459, the General Appropriation Bill, have made careful examination of the original bill with amendments, that was delivered to Engrossing Clerk, Jacob Shaen, for engrossment, and have examined several witnesses without success in determining who was responsible for the errors.

Your committee find by examination of the original bill with amendments attached, that was delivered to Mr. Shaen for engrossment, and by the testimony of Mr. Frank D. Ryan, Chief Clerk of the Assembly, and Mr. Shaen, Engrossing Clerk, that the bill was engrossed as it was delivered to Mr. Shaen, and the causes that led to the engrossment of the bill with amendments that had been adopted by the Assembly omitted from the engrossed bill, existed at the desk in the Assembly Chamber.

This finding is sustained, not only by the evidence of Mr. Ryan and Mr. Shaen, but by examination of the Journal of the Assembly and of the amended bill as printed and delivered to the Assembly.

Neither the Journal nor the amended bill show that any action was taken by the Assembly upon the two amendments that were considered by the House, the first with reference to the salary to be paid to the Secretary and Treasurer of the Board of Commissioners to manage the Yosemite Valley and the Mariposa Big Trees, and the second—(that was adopted by the Assembly during the day, and on reconsideration, was rejected at the evening session).

Being convinced that the causes that led to the errors in the engrossed bill were not the faults of the Engrossing Clerk, Mr. Shaen, but of one or more of the clerks at the desk, we examined into the manner in which the action upon the bill by the Assembly had been made a part of the records of this House.

We find that Mr. Frank D. Ryan, Chief Clerk of the Assembly, was acting as the Reading Clerk during the day, and Mr. Frank J. Brandon acted in the same capacity during the evening; that Mr. G. H. Salisbury, Minute Clerk, was in San José, absent on leave granted by the Speaker; and Mr. Ray G. Falk, Assistant Minute Clerk, was acting as Minute Clerk.

The amendments were sent to the desk, and read by Mr. Ryan; and then, as is customary, delivered to the Minute Clerks to be copied in the minutes, that they might thereafter appear in the Journal of the Assembly, if adopted.

Your committee have been unable to obtain direct evidence to show what became of the first amendment after it was read by Mr. Ryan, but are satisfied that it was not attached to the bill at that time, nor at any time during the day, as the Journal should have had some reference to the

action of the Assembly upon the amendment if the amendment had been copied by the Minute Clerk and returned to Mr. Ryan, in accordance with the regular order of transacting such business.

Had we found perfect system in the management of the business of the Assembly at the desk, we should have been able to determine more definitely to whom the errors were chargeable.

There seems to have been a lack of proper safeguards in the care of the Assembly bills at the Clerk's desk.

During recesses of the Assembly the bills have been left in charge of a Watchman, at the desk.

While we are convinced that the Watchman has been faithful to his trust, we consider the duties of such an officer do not include the care of the Assembly bills and other records left upon the Clerk's desk.

The second amendment was adopted by the Assembly and attached to the bill by Mr. Ryan.

At the evening session the action of the House was reconsidered and the amendment rejected, and it should then have been detached from the bill by Assistant Clerk Brandon.

With the rush of business, during the day the bill was under consideration, some errors were, in part, excusable, but we do not consider such errors as have been shown by our investigation were necessary, had proper safeguards been used by the clerks to insure accuracy in transacting the business of the Assembly and securing a complete record of such business.

The amendments should have been numbered in the order in which they were adopted by the Assembly, the Minute Clerk should have kept complete minutes to show the action of the Committee of the Whole upon the bill, and thus each action of one clerk could have been made a check upon the action of any other clerk.

With the facts that have come under our examination we present this report, and submit the matter to the Assembly.

JOHN R. BRIERLY.  
W. P. MATHEWS.  
J. I. SYKES.

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## REPORT OF ASSEMBLY COMMITTEE

ON

# PUBLIC BUILDINGS AND GROUNDS.

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## REPORT.

ASSEMBLY CHAMBER,  
SACRAMENTO, March 3, 1887. }

MR. SPEAKER: Your Committee on Public Buildings and Grounds, in pursuance of the duties allotted to them, having visited and examined the State Capitol Building and Agricultural Pavilion at Sacramento, the State University, and the Institute for the Deaf and Dumb and the Blind at Berkeley, the Industrial Home of Mechanical Trades for the Adult Blind at Oakland, the Asylums for the Insane at Napa and Stockton, the Normal School at San José and the Branch Normal School at Los Angeles, the Home for the Care and Training of Feeble-Minded Children at Santa Clara, and the Asylum for Chronic Insane in process of erection at Agnews, desire to submit the following report of our inspections and investigations, and such suggestions as we have to offer resulting therefrom, with reference to their needs and condition.

### THE STATE CAPITOL.

We found the building greatly in need of general repairs and paint, more especially the outside walls and dome. Everything about the building is kept in good order with the exception of the basement, which in many places is filled with rubbish and other accumulations. We earnestly recommend a thorough renovation and a judicious use of whitewash in this portion of the building. The Cottier system of ventilation in use in the Senate and Assembly chambers seems to give perfect satisfaction. The grounds in front of the Capitol are in splendid condition, giving evidence of constant care and attention from competent persons, and we hope the condition of the grounds in the rear of the building may soon wear the same elegant appearance, which can be accomplished in a short time if the appropriations for the purpose are allowed. The completion of the stone fence and sidewalk will also add greatly to the general appearance of the grounds.

### THE AGRICULTURAL PAVILION.

This imposing and substantially constructed building situate in the southeast portion of the Capitol grounds, your committee found to be in excellent condition and repair, except that it should be repainted in order to preserve the wood of which it is constructed, and also that its appearance may be a credit to the State.

### THE STATE UNIVERSITY.

After a thorough inspection of the beautiful grounds and the various splendidly arranged buildings of this most important institution, your committee was unanimous in expressions of genuine satisfaction as to its management and general condition. The new building constructed for the

department of mines and metallurgy is of handsome architectural design and very conveniently arranged; it contains all the necessary machinery, mills, tools, and appliances for practical instruction in these branches. The department of agriculture and agricultural chemistry is one of the most important of the institution; its needs are constantly increasing, while the practical results of this department have already been felt throughout the State. We feel that everything should be done to promote an increased interest in this most practical branch. In the judgment of your committee, the present means of obtaining support for this great institution is detrimental to its progress and usefulness; it is also a great source of annoyance to the Regents and Faculty to be obliged to entertain and beg support from each successive legislative committee. The passage of the bill providing for the permanent support of the University at this session of the Legislature will eradicate all existing evils and provide ample means for its future needs.

#### INSTITUTE FOR THE DEAF AND DUMB, AND THE BLIND, AT BERKELEY.

This institution we found to be a model of neatness—everything about the place gives evidence of a management that cannot be excelled in any country. The buildings, which are in all respects admirable, are maintained in excellent order and guarded zealously. The printing office, cooking school, and carpenter shops are departments of great practical utility. The Directors ask for \$33,500 for adding a second story to and completing the educational building, improving the streets, painting buildings, and for the erection of hothouses for teaching pupils the culture and propagation of plants. These are necessary improvements, and your committee unanimously recommend the appropriation.

#### HOME FOR THE ADULT BLIND AT OAKLAND.

This being a new institution, having for its object the improvement of the condition of a class much in need of sympathy and assistance, your committee took especial interest in examining the same. The Home has had very little aid from the State, and consequently its buildings, with the exception of the house used for officers' headquarters, are of a very inferior order. We consider it a very unfortunate circumstance that an institution having such a worthy object should have been located where the drainage is so inadequate, as was clearly evidenced by the unsavory smells, arising from the outbuildings. The broom factory, managed and operated entirely by the blind men, is a wonderful demonstration of what can be accomplished toward improving the unhappy condition of these unfortunate people. We heartily favor a reasonable appropriation for the continuance and improvement of the Home.

#### THE INSANE ASYLUM AT NAPA.

The buildings constituting this great hospital are imposing in appearance, substantially built, and of handsome architectural design. They will undoubtedly bear favorable comparison with any other asylum buildings in the United States. The carving and elaborate finish found in portions of the building we do not recommend in the construction of buildings for State purposes. The location being in the foothills, the drainage is good and the water supply from the mountains unequaled in quantity and quality. The elegant appearance of the grounds, vineyard, orchard,

and garden is evidence of the industrious and constant care and attention given them. We found the building in good order, except that new floors are needed in several of the halls. More than double the number of people that can be accommodated are crowded into this asylum, thereby greatly overtaxing the limited corps of physicians in charge. The early completion of the Hospital for Chronic Insane at Agnews will afford them some relief. No special appropriation has been solicited for this institution.

#### INSANE ASYLUM AT STOCKTON.

The appearance of the buildings and surrounding grounds give evidence of care and good management. Our attention was called to the system of drainage, which we ascertained upon examination can be improved by extending the canal along North Street to the San Joaquin River, which, in our opinion, should be done immediately, and thereby save the property of the people living adjacent to the asylum from damages caused by its stagnant sewage. The Directors ask for forty thousand dollars for the erection of residences for the Assistant Resident Physicians, the Supervisor, and dining-rooms for female and working patients; also to erect and equip a dead-house. These are necessary improvements, and your committee do not regard the appropriation asked for at all extravagant.

#### THE NORMAL SCHOOL AT SAN JOSÉ.

This edifice is a handsome structure, plain, durable, and very conveniently arranged; it is very properly located, in the heart of the Garden City, and possesses many attractions to those who have availed themselves of its advantages. The school is evidently managed with ability, and the buildings and grounds well cared for.

#### THE BRANCH NORMAL SCHOOL AT LOS ANGELES.

The building, although plain in architectural design, is attractive, strong, and substantial, towering prominently from its beautiful location, on an eminence overlooking the lovely "City of the Angels," where nature has so lavishly bestowed her favors, making it impossible for the imagination to conceive a more desirable place for an institution of learning, such as we here found. The popularity of the school is evidenced by the large number of students in attendance, at once creating the impression that it should not be classed as a branch of any other institution.

The appropriation made by the last Legislature for the purpose of improving the grounds is being used for grading, the planting of ornamental trees, and building retaining walls. We suggest an appropriation for the improvement of the mineral cabinet.

#### HOME FOR FEEBLE-MINDED CHILDREN AT SANTA CLARA.

The buildings for the use of this institution are small and entirely inadequate for its purposes. The Directors ask for twenty-five thousand dollars to provide for permanent improvements—the erection of additional buildings, fencing, sewerage, and improving the grounds. Recognizing the fact that this institution is deserving of assistance, your committee earnestly urge that an appropriation be made for these much needed improvements.

## HOSPITAL FOR THE CHRONIC INSANE AT AGNEWS.

Your committee, after making a thorough and careful examination of such buildings as have been erected for this hospital, agree that the work has been especially well done, and that the appropriation made by the last Legislature has been judiciously expended, and that it is absolutely necessary that a further appropriation be made, for additional buildings and to complete those in process of erection. The sum of two hundred and fifty thousand dollars will be asked for to accomplish this end, and we do not consider that sum to be an exorbitant exaction.

Respectfully submitted.

H. W. CARROLL, Chairman.

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REPORT

OF THE

ASSEMBLY COMMITTEE ON FISH AND GAME.

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## REPORT.

MR. SPEAKER: Your Committee on Fish and Game, to whom was referred the memorial from the Legislature of the State of Nevada, relative to the depositing of sawdust in the Truckee River by residents of the State of California, respectfully submit the following report: That in conjunction with the Senate Committee they visited Truckee and Reno. At Truckee they were met by a delegation from the Nevada Legislature. A joint meeting was held, Senator Jones of this State presiding.

Three reasons were submitted to your committee why the further depositing of sawdust in the river should be stopped, viz.:

*First*—Its presence in the river tends to destroy trout and food fish.

*Second*—It is conveyed by the waters of the river through its entire length, and through ditches and canals used for irrigation purposes upon valuable farming and grazing lands, and spreading over the surface thereof, tends to render them almost valueless and unavailable for agricultural purposes.

*Third*—It renders the waters of the river unfit for drinking and domestic purposes, particularly in the summer months, and sickness and death has resulted to the people of Nevada from its use.

At Truckee testimony was taken principally upon the amount and character of the sawdust deposited in the river, and its injury to the fish.

The testimony showed that forty million feet of lumber was cut annually, in the cutting of which is produced about seven million feet of sawdust, which passes into the river.

Above the mills, on the river, and up as far as Lake Tahoe, an abundance of fish are found, while below they are scarce.

It was developed in the testimony taken that the most serious cause of complaint was the injury to the health of the people of Reno and vicinity, caused from the use of the waters of the Truckee River, which is their principal source of supply for domestic purposes.

At the urgent invitation of the Nevada delegation your committee visited Reno for the purpose of hearing the statements of the leading physicians and prominent citizens of that place.

Upon our arrival a meeting was immediately called, and addresses were made as follows:

By R. H. Lindsay, a leading attorney of Reno, who said:

"All the people of Nevada ask is simply justice from the State of California, and thus stay the hand of death that is daily taking away our little children. It is absurd to say that the deposit of sawdust in our river does not deteriorate its quality. Our physicians are here to-night and will state to you that the depositing of it in the water makes it impure and unhealthy. I call attention to the dreadful disease of typhoid fever which afflicted during the past summer the inmates of Bishop Whittaker's seminary. The conclusion formed by our physicians as to the cause of this affliction, came

from the water. There are numbers now down with sickness, the cause of which is traced to the same cause, viz.: the impurity of the water caused from sawdust deposits. A person standing on our river bridge can notice these deposits in the bed of the Truckee River. On the whole line of the stream, from the mills to its mouth, can be found the deposits of sawdust. Upon the broad ground of humanity, for the protection of our homes, and the lives of our people, comprising a community of between four thousand and five thousand, we ask legislative protection from this evil."

In his remarks Judge Boardman said:

"I cannot give all the data and all the terrible results produced by this sawdust evil. We claim that we are entitled to the purity of the water; anything done to make the water impure is an evil which we think we have a right to complain about. In my judgment, the running of sawdust into the river has rendered the water unfit for use for domestic purposes—so much so that the Nevada Legislature is now contemplating and considering a proposition to obtain a new supply for the State institutions at Reno."

The following statements were made by leading physicians of Reno, the first called upon being Dr. Bergstein, a graduate of the University of the Pacific, who said:

"The matter of sawdust in the Truckee River affects us as follows: It is a fact that the decomposition of vegetable matter in water is a great producer of disease. The decomposition of the sawdust in the Truckee River, in my mind, is a source from which disease is produced. Large numbers of dead fish have been found at various times in the Truckee River. The sawdust settles in the gills of the fish which causes their death. At various places along the bed of the Truckee the deposit of sawdust is from three to four feet deep. The cause of the fever epidemic among our people last summer, in my judgment, came from the impure water caused by sawdust deposits in the river."

In reply to a question from Senator Jones, as to whether he had ever made any chemical analysis of the water, the doctor said:

"I have not, but my judgment in this matter is from observation. I notice that people about Reno who use well water were not afflicted by the epidemic, although surrounded by more favorable causes of disease, while the people surrounded by the best health regulations, and most favorably located for health, who use the river water, have been afflicted by the epidemic."

In answer to a question by Assemblyman McGowan, regarding impure waters, he stated:

"It is an acknowledged fact that impure water is one of the most serious causes of disease. I know of nothing in the sawdust itself that would make water impure. It is the decomposition of the sawdust in the water that makes it impure and breeds disease."

Dr. Dawson, a graduate of the Medical University of California, said:

"During the past year, and for several years past, we have noticed that the water from the river was impure. Many of our families have abandoned the river water, and are now using well water for domestic purposes. An epidemic broke out in Bishop Whittaker's seminary last summer, and I made a personal examination of the sewers, water-closets, sinks, and every place about the institution, to discover the cause of the epidemic. As a result of my examination, I came to the conclusion that it was the water; I noticed a peculiar odor about the water; I left a glass of water to settle over night, and in the morning I discovered sediment in the bottom of the glass. The deposits of sawdust in the bed of the river during the

summer months ferments and gives off a slimy substance, which contaminates the water, and even renders the atmosphere impure, which, in my judgment, is the cause of disease.

"I have practiced in Reno since the year 1875, and my observation during these years of practice leads me to the conclusion, beyond any doubt, that this is the cause of disease among our people.

"The water taken from the river opposite the town is noticed to be the same as the water taken from the reservoir. They both give off an offensive smell. As the water lowers in the river, and the warm weather comes on, the water becomes more impure and offensive to the smell."

Dr. S. Bishop, a graduate of the Physio-Medical Institute of Cincinnati, Ohio, said:

"In 1864, a gallon of water of the Truckee River showed but twenty-four grains of impurities. This was considered pure water. It is different now. It is admitted that impure water is a cause of disease. Before sawdust commenced to be deposited in the river, we had no typhoid fever. The disease has become and is becoming more frequent every year. I am satisfied that the sawdust renders the water impure, and has been and is the cause of disease."

Dr. Lewis, a graduate of Long Island (N. Y.) Medical College, said:

"In the first years of my practice here, there was little or no fever. It has become more frequent every year. When the disease first commenced to afflict our people we laid the trouble to other causes, but we have been forced to the conclusion that the water rendered impure from the sawdust is the main cause of disease."

C. C. Powning, United States Surveyor-General of Nevada, said:

"We ask that a few mill men be prevented from contaminating the main and largest river of Nevada. We have repeatedly urged and petitioned the California Legislature to take some action, and they have as yet failed to notice our petitions. In the bed of the river from Tahoe to Truckee there is no sawdust, but from Truckee to Reno and to Pyramid Lake there is a continual deposit from one to three feet of sawdust. We ask that the matter be not delayed longer."

Attorney-General Alexander of Nevada, said:

"This is a friendly conference. We meet to abate, if possible, the trouble between Nevada and California on a friendly basis. The question is whether four or five men running mills on the Truckee River can impair the health of the people of Nevada? Will not the people of California require these men to so use their property as not to interfere with the neighbors of your State. Because these mill men claim that it is convenient for them to deposit the sawdust in the river, will you acknowledge that as an excuse or reason why they can render our water impure? We ask that the Truckee River shall be allowed to run unimpaired from its source to its mouth, and we wish you to acknowledge that the water of this river is as much ours as yours."

Your committee herewith present a bill amending section six hundred and thirty-five of the Penal Code, making it a misdemeanor to deposit sawdust in any of the waters of the State, and recommend its passage.

We also recommend that the State Board of Health make investigation into the effect caused by the deposit of sawdust in the Truckee River upon the health of the people of the State of Nevada.

GEO. WILLIAMS, Chairman.



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REPORT OF ASSEMBLY COMMITTEE  
ON  
STATE HOSPITALS AND ASYLUMS.

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## REPORT.

SACRAMENTO, February 28, 1887.

MR. SPEAKER: Your Committee on State Hospitals and Asylums beg leave to submit to you the following report of their labors and investigations:

We have visited the following State asylums: the Stockton Insane Asylum, at Stockton; the Napa Insane Asylum, at Napa; also, the Protestant Orphan Asylum, San Francisco; the Hebrew Orphan Asylum, San Francisco; and the Protestant and Catholic Orphan Asylums, in Los Angeles. Those institutions which we did not visit, we have sufficient and reliable information to satisfy ourselves of their workings and conditions in all respects, and, after deliberation, we have come to the conclusions which we herewith report.

A large amount of testimony has been taken, but your committee has deemed it wise and more economical to condense this, their testimony and observations so taken, to show to what extent the State has been appropriating money for charitable purposes, and the amount of the appropriations made by a previous Legislature for such purposes.

### TREASURER'S REPORT, TWO LAST FISCAL YEARS, STOCKTON INSANE ASYLUM.

#### *General Fund.*

July 1, 1884, balance as per last biennial report.....	\$42,340 71
July 25, 1884, warrant No. 78.....	7 941 28
August 28, 1884, warrant No. 834.....	16,217 72
August 30, 1884, warrant No. 3,125.....	17,980 41
August 30, 1884, warrant No. 3,582.....	16,240 75
October 10, 1884, warrant No. 1,911.....	14,627 22
October 29, 1884, warrant No. 2,088.....	15,340 13
November 21, 1884, warrant No. 2,703.....	17,894 55
December 20, 1884, warrant No. 3,387.....	18,454 48
January 20, 1885, warrant No. 4,444.....	16,245 95
February 13, 1885, warrant No. —.....	18,012 75
March 20, 1885, warrant No. 7,849.....	18,837 60
March 27, 1885, warrant No. 7,883.....	3,915 43
March 27, 1885, warrant No. 7,894.....	6,214 65
April 23, 1885, warrant No. 8,765.....	16,596 82
May 21, 1885, warrant No. 9,376.....	15,760 57
June 19, 1885, warrant No. 10,078.....	12,012 20
August 20, 1885, warrant No. 998.....	15,464 65
September 24, 1885, warrant No. 1,817.....	15,848 47
October 16, 1885, warrant No. 2,760.....	15,723 20
December 1, 1885, warrant No. 3,649.....	17,205 74
December 24, 1885, warrant No. 4,238.....	16,883 19
February 3, 1886, warrant No. 5,606.....	17,132 35
February 17, 1886, warrant No. 5,903.....	15,895 10
February 25, 1886, warrant No. 5,960.....	1,444 45
March 20, 1886, warrant No. 6,436.....	15,147 86
April 19, 1886, warrant No. 7,284.....	17,481 59
May 28, 1886, warrant No. 8,225.....	17,639 10
June 29, 1886, warrant No. 9,059.....	17,827 22
Total receipts for two years .....	\$458,326 14

*Disbursements.*

Amount paid for general support, as per vouchers now on file, for year ending June 30, 1885	\$196,898 30
For year ending June 30, 1886	198,257 38
Transferred to Contingent Fund, February 10, 1885	20,000 00
Transferred to Contingent Fund, August 11, 1885	8,024 02
Balance in General Fund, June 30, 1886	35,146 44
Total	\$458,326 14

## THE STOCKTON STATE INSANE ASYLUM.

In compliance with our duties, we visited this institution and examined into the conduct and management in every particular, and found the asylum in charge of the following officers:

*Directors*—Robert Watt, J. K. Doak, Charles H. Randall, J. D. McDougald, H. N. Rucker.

*Resident Officers*—W. H. Mays, M.D., Superintendent; W. T. Browne, M.D., deceased, Assistant Physician; W. R. Langdon, M.D., Assistant Physician.

We made an unexpected examination of the affairs of the asylum, and inspected the hospital buildings and patients in a very thorough manner. We found the male department in a very crowded condition; in fact, there are more patients in this department than can be accommodated with comfort. Besides this, a matter entirely beyond the control of the Superintendent, we find nothing either in the conduct or appearance of the male wards but what should be commended. In the female department this trouble of crowding does not exist to so great an extent. The method, regularity, and neatness and cleanliness, which is apparent everywhere, is to be highly commended. The books of the Secretary and Treasurer make a good showing of the condition of the financial department, and are kept in a correct and systematical manner.

*Improvements.*

The improvements carried forward during the past two years have been of a permanent and necessary character. The old and worn out floors have been replaced by new ones. The brick work has been everywhere repaired and painted. New bath-tubs, sinks, urinals, and water-closets of the most approved pattern have been supplied. The Harvey system of hot-water heating has been introduced throughout the whole structure, replacing the old-time stove, fenced around with wire screens, lessening to a considerable degree the dangers of conflagrations. The old disused kitchen, by being raised, reconstructed, and enlarged, has been converted into a spacious associated dining-room, where upwards of four hundred of the quieter class of patients are fed simultaneously three times a day. The favorable workings of so large an associated dining-hall affords an emphatic indorsement of the principle as adapted to patients of the milder type, and is a tribute to the wisdom and foresight of its promoters. The new dairy barn, capable of accommodating seventy cows, is a substantial structure, with concrete floors, and every adaptation for the convenient operation of this important adjunct to the asylum.

*Workshops.*

Something should be said as to the need of workshops for the employment of patients. The importance, both mental and physical, of some

properly adapted form of occupation as a means of cure, and the evil of the opposite condition of utter idleness, are the observations of those in charge and advisable by committee.

*More Medical Help*

Is earnestly called for, and it is the opinion of the committee that an additional Assistant Physician should be granted.

For statistical tables, see Medical Superintendent's report; also, laws of the State concerning the admission of patients into the State Asylum at Stockton.

## CONTINGENT FUND.

*Receipts.*

June 30, 1884—Balance as per last biennial statement	\$7,361 59
Board, etc., for year ending June 30, 1885	8,052 54
Steward's sales, ending June 30, 1885	1,681 87
Board, etc., ending of year, June 30, 1886	7,648 25
Steward's sales, for year ending June 30, 1886	1,604 09
February 5, 1885—Transferred from General Fund	20,000 00
February 5, 1885—Transferred from Furnishing Fund	580 35
August 11, 1885—Transferred from General Fund	8,024 02
August 11, 1885—Deposits of deceased patients	3,190 97
Total	\$58,143 68

*Disbursements.*

New laundry building and fixtures	\$3,140 84
Boring wells	139 61
Interest and expressage	2,832 63
Steam traps for boilers	240 00
Three horses	525 00
Buggy and harness	249 24
Hogs	489 31
Cows	475 00
Grading grounds and graveling streets	6,596 93
Superintendent's expenses to convention of physicians	400 00
Sewerage, connections, etc.	4,307 83
Completion of new building and drainage	14,221 10
Furnishing new building	20,707 71
Attorney's fees	73 25
Painting and repairs	758 01
Mileage	93 60
Cow barn, concrete work, and grading grounds	5,010 70
Trees	57 60
Cars for track from kitchen to dining-room	150 55
To balance	2,325 13
Total	\$60,468 81

## NEW BUILDING FUND—(APPROPRIATION OF \$163,000, MARCH 13, 1883).

*Receipts.*

July, 1884—Warrant No. 30	\$14,782 50
Warrant No. —	7,308 00
Warrant No. 79	3,720 29
August 29, 1884—Warrant No. 646	1,411 35
Warrant No. —	17,438 27
Total	\$44,660 41

*Disbursements.*

Paid Confer Brothers—Warrant No. 30	\$14,782 50
Warrant No. —	7,308 00
Warrant No. —	17,438 27
Paid sundry bills, outside, as per voucher	5,131 64
Total	\$44,660 41



## HEATING AND REPAIRS—(APPROPRIATION, \$25,000, MARCH 10, 1885).

*Receipts.*

September 24, 1885—Warrant No. 1,814 .....	\$1,159 41
December 1, 1885—Warrant No. 3,650 .....	2,911 83
Warrant No. ....	2,466 00
December 24, 1885—Warrant No. 4,237 .....	942 50
February 3, 1886—Warrant No. 5,703 .....	1,800 00
February 20, 1886—Warrant No. 5,910 .....	2,186 28
March 4, 1886—Warrant No. 6,239 .....	3,335 40
March 24, 1886—Warrant No. 6,444 .....	899 13
Warrant No. 6,445 .....	908 60
April 19, 1886—Warrant No. 7,283 .....	953 67
May 28, 1886—Warrant No. 8,224 .....	1,355 80
June 29, 1886—Warrant No. 9,058 .....	1,320 17
<b>Total</b> .....	<b>\$20,238 79</b>

*Disbursements.*

Paid Confer Brothers, contractors—Warrant No. ....	\$2,466 00
Paid Confer Brothers, contractors—Warrant No. 5,702 .....	1,800 00
Paid Confer Brothers, contractors—Warrant No. 6,239 .....	3,335 40
Paid Confer Brothers, contractors—Warrant No. 6,445 .....	908 60
Paid sundry bills, as per vouchers on file .....	11,728 79
<b>Total</b> .....	<b>\$20,238 79</b>

## THE NAPA STATE INSANE ASYLUM

Is situated near Napa City, in Napa Valley, on a beautiful piece of land at the base of the hills, which are to the eastward of the buildings. Upon our visit at this asylum we found the institution in charge of and under the control of the following officers:

*Board of Trustees*—Benj. Shurtleff, President; J. C. Martin, J. Q. Brown, Geo. N. Cornwall, W. F. Henning.

*Secretary of Board and Treasurer*—C. B. Seeley.

*Resident Officers*—E. T. Wilkins, Resident Physician; L. F. Dozier, M.D., Assistant Physician; F. W. Hatch, M.D., Assistant Physician; J. B. Stephens, Secretary.

Upon entering into the inspection of the buildings and different apartments connected with them, we were surprised at the large amount of room and space that was occupied by the officers and employes of the institution, but in not so large a degree as in previous reports.

The following summary exhibits the number of patients in the asylum June 30, 1884, number admitted, number under care and treatment, number discharged, eloped, and died during the year, and the number remaining in the asylum June 30, 1885.

From June 30, 1884, to June 30, 1885.	Males.	Females.	Total.
Number of patients, June 30, 1884 .....	809	510	1,319
Number admitted during the year .....	305	174	479
Number under care and treatment .....	1,114	684	1,798
Number discharged, recovered .....	83	36	119
Number discharged, improved .....	72	74	146
Number discharged, unimproved .....	4	3	7
Number discharged, not insane .....	1	1	2
Number died .....	83	22	110
Number eloped .....	4	1	5
Number discharged, died, and eloped .....	252	137	389
Number remaining, June 30, 1885 .....	862	547	1,409

A corresponding table for June 30, 1886, shows the following facts:

From June 30, 1885, to June 30, 1886.	Males.	Females.	Total.
Number of patients, June 30, 1885 .....	862	547	1,409
Number admitted during the year .....	190	156	346
Number under care and treatment .....	1,052	703	1,755
Number discharged, recovered .....	55	25	80
Number discharged, improved .....	54	46	100
Number discharged, unimproved .....	9	6	15
Number discharged, not insane .....	5	1	6
Number died .....	77	33	113
Number eloped .....	5	—	5
Number discharged, died, and eloped .....	205	114	319
Number remaining, June 30, 1886 .....	847	589	1,436

It will thus be seen that a number of patients committed to this asylum during the fiscal year just closed (three hundred and forty-six) is one hundred and sixty-eight less than the average during the preceding years. This of course is due to the fact that the new building at Stockton was opened for the reception of patients last winter, and that most of the patients from San Francisco have since been sent to that institution. Notwithstanding this relief there were twenty-seven more patients at the end than the beginning of the year, making a total of one thousand four hundred and thirty-six—being thirty-six in excess of the number provided for by the Legislature in the appropriation for the maintenance of this asylum, the per capita cost of maintenance being 37.04 cents per day. In looking over the tables of nativity it will be seen that a large majority of the inmates of our asylums are foreign born, many of them not citizens of the United States, and quite a number, perhaps, were insane before coming to this country, while others are cases of idiocy or imbecility, who were either sent to this State by the aid of the Governments from which they came or the communities in which they lived. The question then is whether it would not be feasible for our Legislature to make an appropriation to return those, especially Chinamen, to their native land. The expense of sending those persons to their homes would not exceed fifty (\$50) dollars each, while to keep them will cost, per annum, one hundred and fifty (\$150) dollars, for an average period of fourteen years, or \$2,100 each if kept until they die.

*Improvements.*

Many necessary improvements have been made. A new gasholder, with a capacity of six thousand feet, and a new bench of retorts for manufacture of gas, have been constructed, and two new boilers of sixty horse power each have been purchased. Cow and calf barns have been constructed. The Lake Camella has been enlarged, new lakes formed, from which the supply of water for the institution, lawns, etc., is received.

Another Assistant Physician is earnestly asked for, and it is the belief of your committee that such should be provided for at each institution, both Stockton and Napa.

The books of the asylum are kept on the same plan and manner as those of the Stockton Insane Asylum, and are, as far as we can ascertain,



for want of room. The Trustees call for additional buildings, and think one hundred and fifty thousand dollars should be appropriated by the Legislature. From the Trustees' report we find that many of the children have made rapid and wonderful progress in their intellectual as well as physical condition.

The present Legislature, having in view the great wants attending our insane institutions, have made an appropriation of two hundred and fifty thousand dollars for the erection of suitable buildings, etc., at Agnew's Station, the Home for Chronic Insane and Feeble-Minded Children, which will fully meet the demands for some time to come, and, with the appropriations for general support of the institution, will be enabled to receive all patients coming in under that head.

#### INSTITUTION FOR THE DEAF, DUMB, AND BLIND.

Is situated at East Berkeley, in Alameda County, and is in charge of the following officers, viz.:

*Board of Trustees*—R. A. Redman, President, Oakland; H. A. Palmer, Vice-President, Berkeley; E. H. Woolsey, Oakland; Geo. H. Rogers, San Francisco; W. L. Praether, Secretary and Treasurer.

*Principal*—Warring Wilkinson, M.A.

*Teachers of the Deaf and Dumb*—Miss Anna B. Carter, Geo. B. Goodall, Theophilus D'Estrella, Henry Frank, Miss M. A. Dutch, Douglas Tilden, Miss K. A. Crandall.

*Teacher of Articulation*—N. F. Whipple.

*Teacher of Drawing*—Theophilus D'Estrella.

*Teachers of the Blind*—Chas. T. Wilkinson, Miss M. S. Day.

*Teacher of Music*—Geo. B. Goodall.

*Physician*—Dr. I. E. Nicholson.

*Clerk*—W. E. Zander.

*Matrons*—Mrs. H. B. Willard, Miss J. Osgood, Miss M. J. Wiseman.

*Foreman Carpenter Shop*—E. P. Pikes.

*Foreman Printing Office*—E. R. Carroll.

*Engineer*—Fred. Hansen.

By means of the appropriations made for specific purposes by the last Legislature the Board has been enabled to carry out and perfect many improvements which have long been needed, and to put the grounds in such shape as to comport with the dignity of the State and the beauty of the site. New and substantial fences have been constructed, a handsome stable is now completed, and a gymnasium has been fitted up with admirable apparatus. Other improvements are badly needed, and the Board earnestly ask of this, the twenty-seventh Legislature, appropriations for the remodeling and construction of buildings that will serve their urgent necessities.

Number of pupils in Deaf, Dumb, and Blind Institution, on the rolls June 30, 1884:

<i>Deaf and Dumb.</i>		
Boys	75	
Girls	50	125
<i>Blind.</i>		
Boys	15	
Girls	11	27
Total, both classes		152

The admissions since same date have been:

<i>Deaf and Dumb.</i>		
Boys	14	
Girls	12	26
<i>Blind.</i>		
Boys	5	
Girls	3	8
Total admissions		34
Total under instructions		186

There have been graduated and discharged:

<i>Deaf and Dumb.</i>		
Boys	11	
Girls	8	
Died	1	20
<i>Blind.</i>		
Boys	7	
Girls	3	10
Total deductions		30
On rolls July 30, 1886		156
Discharged since		4
Admitted since opening term		152
On rolls November 15, 1886		165

All of which is respectfully submitted.

A. B. BUTLER, Chairman.

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REPORT OF SPECIAL COMMITTEE

ON

SAVINGS BANKS.

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## REPORT.

ASSEMBLY CHAMBER, SACRAMENTO, February 15, 1887.

MR. SPEAKER: Your Committee on Savings Banks, to which was referred Assembly Bill No. 402—"An Act for the government of savings banks, and for the protection of depositors in the same"—has given the subject careful consideration, and begs leave herewith to present a substitute for said Assembly Bill No. 402, and to recommend that the substitute do pass.

The committee desires to call your attention to facts set forth in the last report of the Bank Commissioners of date August 10, 1886, covering the subject of savings banks in this State, and showing, by the statements of the banks themselves, that in the interest of depositors, and to restrain the greed of those who bid for the care of the sweat savings of the frugal poor, the State cannot take action too soon.

Without drawing invidious distinctions, it may be said that in one case, and that one the second largest savings bank in the State, the Board of Directors confessed, in its report, that while it pays only three and three quarters per cent dividend to its depositors, it pays its stockholders thirteen and one third per cent; that is to say—the toiler's hard-earned one thousand dollars receives thirty-seven and fifty one hundredths dollars, and the one thousand dollars of the banker is allotted one hundred and thirty-three and thirty-three one hundredths dollars.

Another large savings bank pays depositors four per cent, and its stockholders twelve per cent, and so on down a scale towards honesty until the demands of the banker are met by an advance of only about one hundred per cent over payments to depositors. With one solitary exception, so far as this committee has been able to determine, the banks systematically take large sums from the earnings of deposits, and place them in funds called "Reserve and Profit and Loss," and "Contingent," and "Other Liabilities," in this way alienating such moneys from the real owners, and placing them where, "if they will not do the most good," at least where they can be most easily manipulated. In one flagrant case this fund, wrongfully taken from the poor, has reached the enormous sum of one million and a half (\$1,500,000) of dollars.

Such unjust financiering should be prohibited by law. The natural outgrowth of a first step in "tithing" the earnings of deposits—in robbing depositors of ten per cent of their earnings—may be seen in a practice of extravagant, conscienceless fees to officers, its President, Secretary, and Board of Directors, and its attorney made a millionaire in a decade; its "uncles, and cousins, and aunts" pensioned for life, and sinecure "expertships" created and made "gilt-edged" for the benefit of decayed friends. Why not, when all these things can be done with the money of the poor?

The committee is in the possession of much reliable and specific data, which it will bring forward for your consideration whenever it shall be your pleasure to grant it a hearing.

Your committee is of the opinion that the Bank Commissioners should make a searching investigation, bring these practices to the light of day, and under the provisions of the bill herewith recommended for passage, to apply a remedy.

LABLANC, Chairman.

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TESTIMONY

IN THE

Matter of the Investigation of the Charges Preferred Against

CHIEF JUSTICE ROBERT F. MORRISON

AND

ASSOCIATE JUSTICE JOHN R. SHARPSTEIN.

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## SPECIAL COMMITTEE OF INVESTIGATION.

The Special Committee of Investigation appointed by the Assembly to inquire into the charges presented by Hon. D. S. Terry against Chief Justice R. F. Morrison and Associate Justice J. R. Sharpstein, of the Supreme Court, met at the Capitol, in the Supreme Court chamber, at three P. M. of August 6, 1886, for the purpose of taking testimony with reference thereto. Present, Chairman Morris, Gregory, McGlashan, Davis, and Ashe.

The Clerk read the complaint of Judge Terry, the resolutions of the Assembly with reference thereto, and the return of the Sergeant-at-Arms on the citation served upon the two Justices.

OFFICE OF SERGEANT-AT-ARMS ASSEMBLY,  
SACRAMENTO, August 2, 1886. }

MR. SPEAKER: I herewith make my return of service to the Assembly in the matter of the charges presented against Chief Justice R. F. Morrison.

JEROME PORTER,  
Sergeant-at-Arms.

STATE OF CALIFORNIA, } ss.  
County of Sacramento. }

I hereby certify that I served the resolution, adopted by the Assembly July 29, 1886, together with the complaint presented in said Assembly on said day; also the resolution adopted by the Assembly on the thirtieth day of July, 1886, together with a notification, on the thirty-first day of July, A. D. 1886, on Robert F. Morrison, at his residence in the City and County of San Francisco, State of California, by delivering personally to said Robert F. Morrison a certified copy of each of said resolutions and said complaint, and a notification signed by the Speaker and Clerk of the Assembly, and leaving the same with him. That true copies of all of said papers so served are hereto attached and made part of this return.

JEROME PORTER,  
Sergeant-at-Arms of Assembly, twenty-sixth (extra) session, California Legislature.  
Dated August 2, 1886.

ASSEMBLY CHAMBER, SACRAMENTO, July 30, 1886.

Hon. R. F. MORRISON, *Chief Justice of the Supreme Court of the State of California:*

You are hereby notified to appear before a committee on investigation, on Friday, August 6, 1886, at three o'clock P. M., in the Supreme Court-room at Sacramento, California, in pursuance of a resolution adopted by the Assembly this thirtieth day of July, A. D. 1886, at which time the committee will proceed to the investigation of the complaint presented to said Assembly against yourself, a copy of which is herewith served.

W. H. PARKS,  
Speaker of the Assembly.

Attest:

FRANK D. LONG, Chief Clerk.  
By C. S. LONG, Assistant Clerk.

SACRAMENTO, July 30, 1886.

JEROME PORTER, Esq., *Sergeant-at-Arms of Assembly:*

I hereby certify that a resolution was adopted by the Assembly, on the thirtieth day of July, 1886, of which the following is a copy, viz.:

*Resolved*, That the special committee appointed by the Assembly of the State of California, on July 29, 1886, to investigate the charges contained in the complaint filed against Hon. R. F. Morrison, Chief Justice, and Hon. John R. Sharpstein, Justice of the Supreme Court of this State, be and they are hereby empowered to send for all necessary persons and papers, and to summon witnesses, administer oaths, and to perform all other acts necessary to a full investigation of the charges in said complaint contained; to appoint a clerk at the usual compensation allowed committee clerks, and a stenographer at the compensation allowed Court reporters by law, who shall reduce all testimony to writing; to have said testimony printed daily and laid upon the desks of members; that the Sergeant-at-Arms be and he is hereby instructed to serve copies of the complaint and resolu-

tions herein upon the said Hon. R. F. Morrison and Hon. John R. Sharpstein, and that a notice be served at the same time citing the said Hon. R. F. Morrison and Hon. John R. Sharpstein to appear before said committee at the Supreme Court-room, in the City and County of Sacramento, State of California, on Friday, August 6, A. D. 1886, at three o'clock P. M. of said day.

FRANK D. RYAN,  
Chief Clerk.

By Ed. J. SMITH, Assistant Clerk.

*To the honorable Senate and Assembly of the State of California:*

David S. Terry, a citizen of the State of California, residing in San Joaquin County, complains of R. F. Morrison, Chief Justice of the Supreme Court of said State, and alleges:

That since his election to the office of Justice of said Court, the said R. F. Morrison has, by reason of disease, become, now is, and for all time hereafter will be totally incompetent, by reason of physical and mental infirmity, to discharge the duties of his said office.

Wherefore, your petitioner prays that said R. F. Morrison be moved from his said office, as provided by Section 10, of Article VI, of the Constitution of the State of California.

[Signed:]

D. S. TERRY.

ASSEMBLY CHAMBER, SACRAMENTO, July 30, 1886.

JEROME PORTER, Esq., *Sergeant-at-Arms of Assembly:*

I hereby certify that a resolution was adopted by the Assembly, on the twenty-ninth day of July, 1886, of which the following is a copy, viz.:

WHEREAS, It has been charged by the complaint of David S. Terry, a citizen of this State, that Robert F. Morrison, Chief Justice of the Supreme Court, and John R. Sharpstein, a Justice, have, since their election to that office, become permanently incompetent, by reason of both physical and mental infirmity, to discharge the duties of their office; therefore,

*Resolved*, That a committee of seven be appointed by the Speaker to investigate said charges, and that a copy thereof be furnished to said R. F. Morrison, Chief Justice of the Supreme Court of California, and John R. Sharpstein, Justice of said Court.

And in pursuance thereof, the Speaker appointed as the committee, Messrs. Morris, McJunkin, Gregory, McGlashan, Ashe, Henry, and Davis.

FRANK D. RYAN,  
Chief Clerk.

By Ed. J. SMITH, Assistant Clerk.

OFFICE OF SERGEANT-AT-ARMS ASSEMBLY,  
SACRAMENTO, August 2, 1886. }

MR. SPEAKER: I herewith make my return of service to the Assembly, in the matter of the charges presented against Justice John R. Sharpstein.

JEROME PORTER,  
Sergeant-at-Arms.

STATE OF CALIFORNIA,  
County of Sacramento. } ss.

I hereby certify that I served the resolution adopted by the Assembly July 29, 1886, together with the complaint presented in said Assembly on said day, also the resolution adopted by the Assembly on the thirtieth day of July, 1886, together with a notification, on the thirty-first day of July, A. D. 1886, on John R. Sharpstein, at his residence in the City and County of San Francisco, State of California, by delivering personally to said John R. Sharpstein a certified copy of each of said resolutions and said complaint, and a notification signed by the Speaker and Clerk of the Assembly, and leaving the same with him. That true copies of all of said papers so served are hereto attached and made part of this return.

JEROME PORTER,

Sergeant-at-Arms of Assembly, twenty-sixth (extra) session California Legislature.  
Dated August 2, 1886.

ASSEMBLY CHAMBER, SACRAMENTO, July 30, 1886.

*Hon. J. R. SHARPSTEIN, Justice of the Supreme Court of the State of California:*

You are hereby notified to appear before a committee on investigation on Friday, August 6, 1886, at three o'clock P. M., in the Supreme Court-room at Sacramento, California, in pursuance of a resolution adopted by the Assembly this thirtieth day of July, 1886, at which time the committee will proceed to the investigation of the complaint presented to said Assembly against yourself, a copy of which is herewith served.

W. H. PARKS,  
Speaker of the Assembly.

Attest:

FRANK D. RYAN, Chief Clerk.  
By C. S. LONG, Assistant Clerk.

ASSEMBLY CHAMBER, SACRAMENTO, July 30, 1886.

JEROME PORTER, Esq., *Sergeant-at-Arms of Assembly:*

I hereby certify that a resolution was adopted by the Assembly on the thirtieth day of July, 1886, of which the following is a copy, viz.:

*Resolved*, That the special committee appointed by the Assembly of the State of California on July 29, 1886, to investigate the charges contained in the complaint filed against Hon. R. F. Morrison, Chief Justice, and Hon. John R. Sharpstein, Justice of the Supreme Court of this State, be and they are hereby empowered to send for all necessary persons and papers, and to summon witnesses, administer oaths, and to perform all other acts necessary to a full investigation of the charges in said complaint contained; to appoint a clerk at the usual compensation allowed committee clerks, and a stenographer at the compensation allowed Court reporters by law, who shall reduce all testimony to writing; to have said testimony printed daily and laid upon the desks of members; that the Sergeant-at-Arms be and he is hereby instructed to serve copies of the complaint and resolutions herein upon the said Hon. R. F. Morrison and Hon. John R. Sharpstein, and that a notice be served at the same time citing the said Hon. R. F. Morrison and Hon. John R. Sharpstein to appear before said committee at the Supreme Court-room, in the City and County of Sacramento, State of California, on Friday, August 6, A. D. 1886, at three o'clock P. M. of said day.

FRANK D. RYAN,  
Chief Clerk.

By Ed. J. SMITH, Assistant Clerk.

SACRAMENTO, July 29, 1886.

*To the honorable Senate and Assembly of the State of California:*

David S. Terry, a citizen of the State of California, residing in San Joaquin County, complains of John R. Sharpstein, Justice of the Supreme Court of said State, and alleges:

That since his election to the office of Justice of said Court, the said John R. Sharpstein has, by reason of disease, become, now is, and for all time hereafter will be, totally incompetent, by reason of physical and mental infirmity, to discharge the duties of his said office.

Wherefore your petitioner prays that said John R. Sharpstein be removed from his said office, as provided by Section 10, Article VI, of the Constitution of the State of California.

[Signed:]

D. S. TERRY.

ASSEMBLY CHAMBER, SACRAMENTO, July 30, 1886.

JEROME PORTER, Esq., *Sergeant-at-Arms of Assembly:*

I hereby certify that a resolution was adopted by the Assembly on the twenty-ninth day of July, 1886, of which the following is a copy, viz.:

WHEREAS, It has been charged by the complaint of David S. Terry, a citizen of this State, that Robert F. Morrison, Chief Justice of the Supreme Court, and John R. Sharpstein, a Justice, have, since their election to that office, become permanently incompetent, by reason of both physical and mental infirmity, to discharge the duties of their office; therefore,

*Resolved*, That a committee of seven be appointed by the Speaker to investigate said charges, and that a copy thereof be furnished to said R. F. Morrison, Chief Justice of the Supreme Court of California, and John R. Sharpstein, Justice of said Court.

And in pursuance thereof the Speaker appointed as the committee, Messrs. Morris, McJunkin, Gregory, McGlashan, Ashe, Henry, and Davis.

FRANK D. RYAN,  
Chief Clerk.

By Ed. J. SMITH, Assistant Clerk.

Also, the following letter from the Justices:

STATE OF CALIFORNIA, JUDICIAL DEPARTMENT, SUPREME COURT,  
August 5, 1886. }

*To the Hon. WILLIAM H. PARKS, Speaker of the Assembly of the State of California:*

SIR: We are in receipt of a notice, dated July 30, 1886, requesting our attendance tomorrow before a committee of the Assembly, with a view to an investigation touching our capacity to discharge the duties devolved upon us as members of the Supreme Court.

We are also in receipt of copies of certain charges made against us, and also of the resolutions of the Assembly appointing the committee, and empowering it to send for persons and papers.

While entertaining the highest respect for the Assembly of the State, we feel that we would be wanting in the proper discharge of the high trust imposed upon us by the people as members of the judicial department of the State, should we fail carefully to guard the independence of the coördinate branch of the Government, committed, in part, to our charge.

The harmonious and efficient operation of our political system depends upon its checks and balances; and it must be admitted that the independence of each of the three great departments of government is essential to the permanency of our free institutions.

Recognizing fully the power of the two Houses of the Legislature to remove Judges of the Supreme Court by concurrent resolution, as provided in Art. VI, Sec. 10, of the Constitution of this State, such action can only be taken for an adequate cause, and after an opportunity afforded such Judges of being heard in their defense before the two Houses in whom this great power is vested.

Members of the Judicial Department of the Government can not, under the Constitution, be tried by a body of lesser dignity in the Government than the Houses of the Legislature; nor can such power be delegated to a committee, or less number than an organized House.

We cannot, therefore, construe the resolution of the Assembly referred to as other than one for the purpose of ascertaining by preliminary investigation whether the Judges against whom such charges have been made shall be put upon their trial.

Should we be cited by the honorable Assembly to answer any charges arising under the Constitution and laws we will promptly appear and make our defense, but must, for the reasons stated, respectfully decline to recognize any committee as vested with jurisdiction to hear and determine any accusation against us.

With full confidence that you and the honorable body over which you preside will read in this communication, not an attempt to obstruct the legitimate exercise of the power of the Legislature, but rather a desire to protect the independence of the judiciary, and with the conviction that as the Courts have never failed to maintain legislators in the full and untrammelled discharge of their legitimate functions, so you and they will not, upon reflection, fail to approve in us a determination to maintain the rights and immunities of that branch of the Government of which we are a part, and upon whose absolute freedom of action every citizen of the State, from the highest to the humblest, has a deep and abiding interest.

We have the honor to remain,

Yours, respectfully,

ROBERT F. MORRISON,  
Chief Justice of the Supreme Court.  
J. R. SHARPSTEIN,  
Associate Justice.

MR. McGLASHAN—I move that the communication of the Supreme Justices be spread upon the minutes, and that the committee proceed to hear such testimony as may be adduced.

Carried.

MR. McGLASHAN—I move that Judge Terry be requested to propound questions to the witnesses.

Carried.

J. J. PAULSELL.

Sworn.

MR. TERRY—What position do you occupy? Answer.—Deputy Clerk of the Supreme Court.

Q. Have you the minutes of the Supreme Court in bank from the tenth day of July, 1885, to the present time? A. I have.

Q. Turn to them. How many opinions have been filed by the Supreme Court during that time? A. That would necessitate a good deal of figuring. I would have to go through the whole book to ascertain.

Q. Have you ever made an estimate? A. I never have.

Q. Just count the cases. A. There are over two hundred pages. Some of the cases are with reference to writs of habeas corpus. Do you want those?

Q. I want the cases where opinions have been filed.

MR. McGLASHAN—I would suggest, as there may be a line of questions asked this witness which will require a great deal of time to answer correctly, that Judge Terry ask those questions, and the witness be allowed time to make the necessary investigation to enable him to answer, and that meanwhile we proceed with other testimony.

MR. TERRY—I want to find out the number of cases which were decided in bank within the time specified, and then the number of opinions written

by Chief Justice Morrison and Justice Sharpstein during the same time, with the numbers of the cases.

WITNESS—I would suggest that that could be obtained from the Secretary of the Supreme Court a great deal better than from the office of the Clerk here.

THE CHAIRMAN—Where is the office of the Secretary? A. In San Francisco. There is where all the opinions are filed.

Q. Do you not keep a record of the opinions filed? A. No special record farther than the minutes show.

Q. But the minutes do show also? A. Yes; but in order to ascertain the opinions in department and bank I would have to go through the minutes, while the Secretary of the Supreme Court could at once give the exact number of opinions filed and by whom written.

MR. TERRY—I do not know of any other way to ascertain it now than by an examination of the minutes.

THE CHAIRMAN—Proceed, then.

MR. McGLASHAN—Is there any objection, Judge Terry, to your submitting the questions you have indicated in writing, and allowing the Clerk time to examine the minutes and prepare his answers?

MR. TERRY—The questions I desire to ask are:

1. How many cases were decided in bank during the period specified?
2. How many cases were decided in department during the same time?
3. How many opinions were written by these two Justices?

MR. McGLASHAN—While the Clerk is ascertaining the facts in answer to those questions, is there any objection to examining some other witness?

MR. TERRY—The first step in the investigation is to ascertain what these two Justices have done?

THE CHAIRMAN—Suppose, Judge Terry, you write out the questions you desire the witness to answer, and let him take time to ascertain the facts.

MR. TERRY—Very well. These are the questions I wish to put to the witness:

1. What number of opinions have been filed by the Supreme Court of California from the tenth day of July, 1885, to the first day of August, 1886?
2. What number of opinions were written during that period by Morrison, C. J., and what were the titles and numbers of the cases in which he wrote opinions?
3. What number of opinions were written during that period by Sharpstein, J., and what were the titles and numbers of the cases in which he wrote opinions?

WITNESS—To answer all those questions I would require two or three assistants. I would suggest again that the information desired can be obtained more accurately by applying to the Secretary of the Supreme Court at San Francisco, as he has a record of the cases filed and by whom the decisions were written, while I have not. For me to ascertain the facts would necessitate the turning over of six hundred or eight hundred pages of minutes in bank and in department; and when I was through I could not swear it was an accurate account.

MR. DAVIS—Are the opinions handed down to the Secretary first? A. They are handed to him before they are transmitted to this office.

MR. TERRY—Can you state from such examination as you have made whether any opinions have been filed, written either by Morrison, C. J., or Sharpstein, J., since the twenty-sixth of May, 1886? A. I have examined the books, but would not swear there was no opinion written during that time by either of those Justices; for I have not a correct account farther than the minutes show.

Q. I mean as shown by the minutes of the Court? A. My examination of the minutes shows that there were no opinions written either by Morrison, C. J., or Sharpstein, J., from the twenty-sixth of May of this year to this date. But, as I have said, I could not swear that that is so any farther than the minutes show it.

Q. The minutes do not show any opinion written by either of them between those dates? A. No.

Q. State whether any opinion has been written by Morrison, C. J., as shown by your minutes, since the first day of April, 1886? A. I could not swear as to that, because I have not examined.

Q. You can make the examination now. It does not require much examination between the first of April and the twenty-sixth of May? A. [After examining minutes.] There is one, under date of April twenty-third, in the estate of Bowman.

Q. That is not an opinion at all. That is simply an order. That reads "Judgment of Department One approved?" A. Then there was no opinion filed by Morrison, C. J., from April 1st to May 26, 1886.

Q. And none after May twenty-sixth? A. No; none to the present time.

Q. Do you know whether the opinions of the Supreme Court of California were printed in the *West Coast Reporter* before the destruction of Bancroft's printing establishment? A. Whether they were all printed in the *West Coast Reporter* or not?

Q. Yes? A. I do not.

MR. TERRY—I cannot proceed much farther without an answer to the questions I have asked. I have personally made an investigation in the *West Coast Reporter* and *Pacific Reporter*, and the number of cases agrees exactly with the record.

MR. McGLASHAN—I would move that such assistance as is necessary be given the witness while he is preparing the answers desired.

MR. DAVIS—[To witness]—How many pages will you have to look over? A. Six hundred.

MR. DAVIS—That is a matter of not over two hours. The names are signed at the bottom in each case.

WITNESS—Yes. But I have to look at the minutes to ascertain it.

MR. TERRY—The minutes show the name of the Justice writing the opinion and the names of the Justices concurring. The only way I know of to arrive at it is to ascertain from the minutes the number of cases and who wrote the opinions.

WITNESS—The committee can have the attendance of the Secretary before I could be ready with an answer to the questions asked.

MR. McGLASHAN—If the Secretary were here, would it not take him just as long to ascertain? A. No; because he has a record of all the decisions and the date of filing, as well as of the Justices who wrote the opinions.

MR. DAVIS—Do not your minutes show by whom the decisions were written? A. They do. But I have to go through them in order to find out, while the Secretary has a separate book containing the date of filing, the decisions, and by whom each decision was rendered.

MR. TERRY—You have an index of all the opinions filed, have you not? A. No. All the decisions are filed in San Francisco. This and the Los Angeles office do not keep any index of them.

THE CHAIRMAN—Do you wish, Judge Terry, to subpoena the Secretary of the Supreme Court?

MR. TERRY—[To witness]—What is the name of the book that the Secretary would have to bring with him to answer these questions? A. If

these questions are submitted to him he will necessarily know what book to bring.

MR. McGLASHAN—If the minutes show the facts, while it would take some little time for the witness to examine them so that he can answer, it will probably cost less than the mileage of the Secretary if summoned here.

WITNESS—If I make the examination, am I to consider a decision in a habeas corpus case a decision within the meaning of the questions asked?

MR. TERRY—Any case in which an opinion was filed; and opinions are generally filed in all cases? I find on examination from the beginning of the seventh volume of the *West Coast Reporter* to the twenty-sixth of May last, the whole number of cases decided and the number of cases decided by each Judge. I have a note of the pages on which those decisions are found. The number agrees with a list made by the Clerk of the Supreme Court in San Francisco. So, I have no doubt that all the opinions of the Court were published in the *West Coast Reporter* up to the time of the destruction of the Bancroft building. I have also made an examination of the records here this morning to ascertain whether any opinion had been written by either Chief Justice Morrison or Justice Sharpstein since the twenty-sixth of May last, and find there had not. I find that the last opinion written by Chief Justice Morrison was printed in the *West Coast Reporter* on the first of April, and filed on March twenty-fourth. I find that but two opinions have been written in that time by Justice Sharpstein; one in the case of *Harmon et al. vs. Ashmead et al.* (8 W. C. Rep., p. 682), and an appeal in the case of *Little vs. Jacks* (Pacific Rep., June 22, p. 128). I desire an examination of the minutes to verify the correctness of my personal examination.

MR. McGLASHAN—I move that the witness be instructed to answer the questions, and furnished such assistance as he may require to enable him to do so, and that pending his examination of the books the committee proceed with other witnesses.

So ordered.

MR. TERRY—Then I will ask Judge Cope to take the stand.

W. W. COPE.

Sworn.

MR. TERRY—How long have you been acquainted with Chief Justice Morrison? Answer—It is impossible for me to fix the period exactly; for fourteen or fifteen years, or more, perhaps.

Q. You have been quite well acquainted with him? A. Yes.

Q. Do you know whether, since his election to the office of Chief Justice, he has been attacked by any serious disease or bodily illness? A. He has.

Q. About when was that? A. It is impossible for me to fix the date. It was some time ago.

Q. Some time after his election? A. Yes.

Q. Has not his physical health been very much impaired by that attack? A. I think so.

Q. Has it not deprived him in very great measure of the power to work? A. During a portion of the time I think it has. He had an attack of paralysis some time ago, and I think for some after it did deprive him of the power to work to the same extent that he had before.

Q. Is he able now to work to the same extent that he did before? A. He would not be able to do very exacting physical labor, I think.

Q. Is not mental labor as exhausting as physical? A. I suppose it is, to some extent; in some directions.

Q. Do you not think that a sound body is as necessary to the accomplishment of work as a sound mind? A. In certain classes of work it certainly would be.

Q. I mean mental work—the work of a Judge of the Supreme Court. You know what that work is. You have been on the Supreme bench yourself? A. I can only speak of such matters as they come to my attention. There are many noted cases of paralysis in which the mental faculties of the person attacked have not been materially injured. One noted case is that of Tilden, who recently died. I suppose Tilden has been paralytic for twenty years, and yet I think it has been generally understood in the country, especially by prominent Democrats, that his mental faculties were not very seriously impaired.

Q. Do you think Judge Morrison's faculties have been impaired by the attack of which you have spoken? A. It is impossible for me to answer that question. I can only judge by what I know of the labor that he has performed. Judge Morrison has been in the position of Chief Justice, and of course it was not expected of him that he would engage generally in the business of writing opinions; but his duties would more properly be discharged, under the Constitution, by acting as a sort of revisory Judge over the different departments. So far as I have any means of judging, I should think that at present, and for some little time past, his mind was as clear and distinct as it ever was.

Q. Do you think that in November, 1885, his mind was as good as it ever was? A. It would be impossible for me to say. I know that for some little time after he had the attack referred to—which was quite a serious one—I believe I did not see him. He was confined to his house and to his bed by the attack, and I should think probably the condition of his body operated sympathetically upon his mind. But his right hand, I believe, has not been affected. He writes with the same facility that he always did. His other limbs have been affected to some extent. He does not walk very well, but he walks from his house to the chambers of the Justices every day, I believe. When I have had any business to do with the Court, I have usually found him in his office; that is, for some time past.

Q. Have you read his opinions carefully? A. I do not think I have had any occasion to read his opinions very carefully.

Q. Just read the opinion in the case of *The People vs. Sullivan* (vol. 8, p. 156, W. C. Rep.), and state whether you think Judge Morrison's intellect was as good when he wrote that as it was before he was paralyzed?

A. Do you wish to call my attention to any part of the opinion?

Q. To the whole opinion.

MR. DAVIS—When was that opinion written?

MR. TERRY—November 19, 1885.

WITNESS—I would dislike very much to be called on to give my opinion of my own sanity in rendering some opinions that I rendered when on the Supreme bench.

The witness read the opinion in the case of *The People vs. Sullivan*, as follows:

“Morrison, C. J.—The defendant was convicted of the crime of murder in the second degree, and adjudged to suffer imprisonment therefor for the term of twenty-five years. On this appeal he makes the following points:

“I. The Court erred in admitting the declaration of deceased.

“II. The Court erred in admitting the testimony of H. J. White, who claimed to be an expert, as to whether the wound had been inflicted with a dull or sharp instrument.

“III. The Court erred in refusing to give an instruction asked by the defendant, upon the hypothesis that his testimony was true.

“1. The following is the testimony objected to under the first alleged error:

“Counsel for the people asked the following questions, upon which the Court made the ruling that follows:

“Q. Did he, deceased, say anything about sending for a doctor while in that condition? A. Yes; I will tell you.

“Q. Just state what he said about sending for a doctor?

“Mr. Hinds [counsel for defendant]—We object to it, on the ground that it is incompetent, and not admissible as a dying declaration, or as a part of the *res gestæ*.

“Mr. Harris [for the people]—We want to show that the deceased asked them if they had sent for a doctor, and they said no, but they would, and he said it was no use, they couldn't do him any good. We want to establish the foundation for introducing other declarations. Does the Court admit the question?

“Court—Yes.

“Mr. Hinds—We take an exception.

“Mr. Harris—State what he said about sending for a doctor first. A. He asked if we sent for a doctor. He was told no, but there would be a doctor there as soon as possible. Says he: ‘I don't think it is necessary; I don't think a doctor will do me any good.’

“Q. Did he say anything else in that conversation?

“Counsel for defendant—We object to any declarations, on the ground that they are incompetent—not dying declarations, or a part of the *res gestæ*.

“Court—Same ruling and same exception.

“Q. Go ahead. A. He asked if he was hurt. He was told he was. How he got hurt. He was not told how he got hurt; and then he says, Have you sent for a doctor? They said there would be a doctor there as soon as we could get him there. He says: I don't think it is necessary, because I don't think he could do me any good; and then asked if we had any morphine, and they said no. He died about an hour and a half—about two hours, I guess—after he said these words.

“Q. He asked how he got hurt? A. Yes, sir.”

“Even if it be conceded that the foregoing testimony was improperly admitted, there is nothing in it calculated to prejudice the defendant, and if error was committed by the Court in admitting it, it was error without injury.

“2. The second alleged error relates to the testimony of H. J. White.

“The witness, after fully describing the wounds found on the person of the deceased, and after testifying that he had had experience in seeing, very frequently, cut wounds, and was well acquainted with wounds made with a sharp instrument, and blunt ones also, said: ‘I have been here since 1849, and have seen a great deal of this kind of work. From my experience, I am competent to tell, from seeing a wound, what it was made with.’ He was then asked by the counsel for the people as follows:

“Mr. Harris—Did that wound [meaning a wound he had described] have the appearance of being done by a sharp instrument, or a dull instrument?

"S. J. Hinds—[counsel for defendant]—We object to the testimony, on the grounds: First, that he is not shown to be a professional expert on wounds. Second, that granting that he is an expert on wounds, it is incompetent for a man looking at a wound to give his opinion as to how it was caused, whether he speaks professionally or otherwise; he can state the facts, but he can't state his opinion.

"The Court—The Court will overrule the objection.

"Mr. Hinds—We except."

"In answer to the question, the witness stated that the wound had the appearance of being done with a dull instrument. The same witness testified to having found blood and gray hairs on the blunt end of the axe found near the place of killing—that is, the hairs were found on what was called the pole of the axe and the blood on the handle—and the wound being testified to was located by witness as having been found on the head of deceased, who had black and gray hair.

"We do not see, in view of all the circumstances in evidence in the case, how the defendant could have been injured by the testimony complained of, for he made a full statement of the facts attending the homicide, between which statement and the testimony of White there is no conflict.

"But we are of opinion that the witness, White, was a competent witness in respect to the matter on which he testified, and for that reason there was no error in admitting his testimony.

"3. The third point presents a more material and important question, and it challenges the action of the Court in refusing to give an instruction asked by the defendant as follows:

"If you have in your minds a reasonable doubt as to whether defendant's story is true or false—that is, if you are not satisfied that it is false—then his story shows he acted in protecting himself from great bodily harm, or that his position or surroundings were such as to excite in the mind of a reasonable person that his life or body was in great danger, then you should not hesitate to acquit him and give him the benefit of that doubt."

"The foregoing instruction, as we understand it, does not contain a correct statement of the law, and if it did, the matter covered by the question of self-defense was embraced in other instructions given the jury by the Court.

"After an examination of all the instructions in the case, we think the law was fully and correctly stated on the trial, and, finding no substantial error in the record, the judgment and order are affirmed.

"Myrick, J., and Thornton, J., concurred."

MR. TERRY—You have read a good many reports, have you not? A. Several.

Q. Did you ever see anything like that opinion in any other report? A. In what respect?

Q. The quotations from the testimony and the remarks of counsel, etc.? A. It has been quite a habit with this Supreme Court to do that. I have frequently noticed long extracts from findings by the Court below.

Q. And questions and answers and arguments of counsel? A. I think so.

Q. Have you in any opinion except those of Chief Justice Morrison? A. Yes. In Justice Thornton's opinions I have noticed very elaborate statements of the facts taken from the findings, and the findings themselves given.

Q. But in *The People vs. Sullivan* it is not findings, but questions, objections, and arguments of counsel that are given. Did you ever see that in any opinion other than one of Judge Morrison's? A. I was examining an

opinion in the Michigan Reports, some time ago, in a will case. The question arose as to the form of some questions that were asked, it being in regard to the contest of a will. Objection was made with regard to questions that involved the opinions of witnesses. I happened to get hold of this Michigan case, and I found a great number of forms of questions as put by the counsel, and objections as made, stated in the opinion of the Court. I found it a most valuable authority for that reason.

Q. Do you think this opinion to which I have called your attention a valuable one? A. I am not prepared to pass on the value of the opinion. I would dislike very much to pass on the value of the opinion of any Judge.

Q. Did you ever see in any opinion except this, quotations of questions and answers and argument of counsel? A. I am not aware that I ever saw anything like that, but I have seen many opinions of the same nature. In writing opinions myself, I always avoided those things as far as I could and put the propositions in my own language. But every Judge has peculiarities, and you find opinions differing in that regard.

Q. Do you not know that for a large portion of the time the last twelve months Judge Morrison has not performed the duties of Chief Justice, but they have been performed by Judge McKee and other of the Justices, because of the inability of Judge Morrison to perform them? A. I know that on some occasions Judge Morrison has been absent from the city, and the duties have been performed by Judge McKee. Whether that was done in any case when Judge Morrison was in the city I do not know; but I presume that during a portion of his illness it must have been so.

Q. I mean within the last twelve months? A. That may be.

Q. Has not Judge McKee frequently acted as Chief Justice? A. I know that the Court has recently, on several occasions, divided up, and a portion of the Justices have gone to Los Angeles—that is, one department—and I believe Judge Morrison went with them. When Judge Morrison went as a member of the department Judge McKee remained at San Francisco and discharged the duties of Chief Justice. Perhaps the same thing has taken place with reference to Sacramento. I do not speak with any great certainty on that subject, but that is my recollection.

Q. When the Court was not in session, either at Sacramento or Los Angeles, have not the duties of the Chief Justice been performed by Judge McKee because of the inability of Judge Morrison to attend to them from sickness? A. Speaking of my own knowledge, I do not know. I know that on various occasions the duties of the Chief Justice have been performed by the acting Chief Justice, who was Judge McKee; but what the reason was I am not able now to state.

Q. Do you know whether, within the last twelve months or a little over, Justice Sharpstein has been attacked by a severe illness? A. Yes; I do know it as a fact.

MR. DAVIS—In your opinion is the mental condition of Chief Justice Morrison so sound that you would be willing, and consider you were doing full justice to your client, to try and to argue an important case, involving complex questions of law, before him alone, if there was no appeal from his decision? A. There are very few gentlemen at the bar whom I would place in so high a position as that. The Supreme Court consists of a number of Judges, and it is generally considered that correctness is arrived at by concurrence of minds. I have this to say: that, so far as I can judge, I think Judge Morrison's mental faculties are as sound now as they were at the time of or previous to his illness.



Q. And Judge Sharpstein? A. The illness of Judge Sharpstein was more recently contracted. He was attacked some time ago, and by erysipelas and neuralgia combined. His health was very seriously impaired for some time and undoubtedly he was incapacitated from labor. But I now meet him almost every day, and he seems to be rapidly recovering his health; and there is no pretense for saying that his mental faculties are permanently impaired.

MR. TERRY—He has not done any work for twelve months, has he? A. I think his illness has been of such a character that he could not do the ordinary work of writing opinions. I think he has done very little work for six or eight months.

Q. Do you not know that he has not written any opinions for a longer period than that? A. I do not know as to that.

MR. ASHE—Is it more from mental or from physical weakness that he has been incapacitated from writing opinions? A. I have told you what was his ailment. I suppose during the greatest intensity of his disease his mental as well as his physical faculties must have been impaired; but he is now regaining his original physical energies, as I understand, and his mental capacity seems to be entirely clear.

MR. TERRY—What evidence have you of that, if he has performed no work in his office? A. I only know from meeting him and talking to him. I meet him almost every day. I am a member of the Bar Association, and he comes every day to lunch, and I meet and talk with him. He seems to express himself well and his mind appears to be acting as well as formerly.

S. M. WILSON.

Sworn.

MR. TERRY—How long have you known Chief Justice Morrison? Answer—I should think upwards of twenty-five years.

Q. You have been pretty well acquainted with him all that time? A. Yes; very well acquainted with him, both at the bar and on the bench of the District and Supreme Court.

Q. Do you know, if after his election as Chief Justice, he was attacked with serious illness? A. Yes.

Q. Do you know whether the effect of that illness has left him? A. No, it has not left him thoroughly at this time.

Q. Is not his physical condition very feeble still? A. I should think it was quite feeble.

Q. What do you think of his mental faculties now, comparing them with what they were when he was elected? A. I am unable to detect any difference. I should say, from my acquaintance with Judge Morrison, that his mental faculties were as good as they ever were.

Q. Is his ability to work as good as it ever was? A. I should think his mental capacity was as good.

Q. Is his capacity to do the work of his office as good as it was when he was elected? A. He could not work as many hours as he used to or as he had the capacity to when he was a younger man.

Q. Does not his physical infirmity seriously affect his thinking powers? A. I do not think his physical infirmities interfere with his performance of the duties of his position. I think he has sufficient physical ability to do the mental labor which his position requires.

Q. The duties of that position would occupy a man with a sound mind

in a sound body, would they not? A. That does not always follow. I have seen some of the brightest minds in feeble shells.

Q. Does not an ailment of the body affect the power of the mind? A. It did not in the case of Chief Justice Taney, who was a feeble invalid all his life. It did not in the case of Tilden, or in that of many other gentlemen whom I have known. Felton was affected something as Judge Morrison is; yet after he had been affected in that way I tried cases with him and found his mind was very clear. Judge Dwinelle of San Francisco, after he had had a stroke of apoplexy, continued to be a partner of McClure and transacted business, and his clients appeared to have confidence in him.

Q. Have you read the opinions of Judge Morrison carefully? A. I do not read the opinions of any of the Justices very carefully except they are given in my own cases. Then I read them very carefully indeed; otherwise I give them but a general reading.

Q. Do you detect any difference in his opinions now and those he wrote before he was affected? A. I have not.

Q. Have you examined them? A. Not with that view at all. But there is nothing in the opinions of Judge Morrison that has struck me as indicating any change in him.

Q. What are the classes of cases his opinions are generally written in? He has not decided any important case or question for the last two years, has he? A. I could not tell you as to that.

Q. He has participated in the trial of cases before the Supreme Court? A. Yes.

Q. And he has concurred in opinions written by the other Justices? A. Yes.

Q. Has he written any opinion in any important case or on any important question for the last two years? A. I was laid up myself and in bed or in the house for six or seven months. I did not read any law during that time; I was under the direction of the physician not to read any law. I read novels the most of the time I was laid up, and the reading of law opinions did not come in as a part of my amusement; therefore I could not answer your question for two years back.

Q. Look at the case of *The People vs. Sullivan*, and state if you do not think that is a novel opinion? A. I never compared it with any former opinion. [Reads.] "The defendant was convicted of the crime of murder in the second degree, and adjudged to suffer imprisonment therefor for the term of twenty-five years." That is a clear statement of what his offense and the punishment was. "On this appeal he makes the following points:" stating three specifications of error. Those I suppose are taken from the assignment of error made by counsel. I do not see anything in that but what is correct. "The following is the testimony objected to under the first alleged error:" quoting to show the evidence which was objected to. That is a very common thing for a Judge to do. I do not see anything in that that would attract attention, because that which follows is the testimony objected to under the first alleged error. There is a continuous quotation of the matter which was objected to by counsel, and then the Court being called on to pronounce as to whether that was admissible evidence, says: "Even if it be conceded that the foregoing testimony was improperly admitted, there is nothing in it calculated to prejudice the defendant, and if error was committed by the Court in admitting it, it was error without injury."

Q. Did you ever see, in any other opinion, the objection of the counsel for defendant, the reply of the counsel for the prosecution, and the ruling

of the Court quoted in that way? A. I should not think there was anything wrong in that.

Q. Can you mention any opinion of any other Judge containing any such thing? A. I have no doubt in the world that I could find hundreds of instances. There is nothing in it that attracts my attention as evidence of want of capacity of the Judge. It is probable that this evidence was inserted in the statement in the record as having been objected to under the first alleged error, and the opinion simply says that that evidence was objected to, quoting it. Probably in that instance Justice Morrison directed his clerk, by a mark drawn around the record, to copy that in his opinion, without going through the labor of embodying what was contained in the record and objected to himself in his decision. I presume you, when Judge, frequently did that. Where it was merely clerical labor you would direct the clerk to copy certain things. I know if I was a Judge I would do so; I would not perform the clerical labor of merely copying.

Q. You would not put such quotations in an opinion, if you were writing one, would you? A. I do not know why I would not.

Q. Would you? A. If it was evidence objected to, and I had to pass on whether that was a good objection or not, in writing the opinion I would state what the testimony was. I do not see anything wrong in that. The second alleged error relates to the testimony of H. J. White, and quotes it. I must say that I do not see anything at all in that to attract attention. What is more, in that opinion Justice Morrison sustains the Judge below, and two other Justices concur. So three Judges concur in the opinion of Justice Morrison. I should not say that those four men were mentally incapacitated to act as Judges.

Q. The two other Justices concur in the affirmation of the judgment of the Court below. Do you think either of them would have written an opinion just in that way, and included all those objections and arguments? A. When a Justice does not intend to conform to an opinion, he generally states that he concurs in the judgment. But in this case there was a general concurrence.

Q. But the point decided was that even if error was committed, no one was hurt; and that was what was concurred in? A. There were four errors alleged. They were all decided, and the Justices all concurred that there was no error in the case. The judgment and order of the Court below was affirmed, and it was held that it had committed no error. I very often read Supreme Court decisions, rendered by very able Judges, that I do not concur in, and do not think are good law, especially where I am the counsel for the side that loses.

Q. I do not say that the opinion in *The People vs. Sullivan* is not good law, but only ask you if you have ever seen another opinion written in that style, with all the testimony and the arguments of counsel inserted? A. By examining the English Reports it will be seen that it is a very common thing for counsel to discuss with the Court questions raised by it during the argument. Indeed, it is very often done in all Courts, depending on the character and temperament of the Judge. Some Judges sit still and allow you to argue until you are through, without saying a word, while others ask questions and propound conundrums—legal propositions—all the time. That is the experience of us all. For myself, I like to make my own argument without interruption, and for the Judge to sit and hear me until I am through. But very often Judges ask me questions, and sometimes very difficult questions to answer.

Q. But there are no questions asked in this instance. There is simply a long quotation from the record, apparently including objections, argu-

ments, and everything else? A. That is quoted from the record. The counsel in the case made up the record, and the Court simply quotes what the record shows.

Q. What was there to make such quotations from the record appropriate? Could not the case have been decided a great deal better without that? Was there any necessity for all that? A. The opinion would not have shown what the evidence objected to was unless Justice Morrison had quoted it.

Q. His opinion simply states that the evidence did not hurt anybody, whether rightly or wrongly admitted. Was it necessary to set the evidence out in the opinion for the purpose of stating that? A. I can find you cases in the books where the evidence is set out, page after page, by the best Judges, quoting it in the opinion. A Chancellor is very much in the habit of doing that.

Q. But this is not a chancery case? A. No; but I have seen pages on pages of evidence published in opinions. I must say that if I had taken this particular opinion of Judge Morrison and read it, it would not have attracted my attention as showing any mental incapacity.

Q. It would not have struck you as showing any very great amount of mental capacity, would it? A. I do not think the case called for any very able Judge. It was not like one of Marshall's or Taney's cases, involving great constitutional questions, but was simply a question of evidence in an ordinary case. The mass of cases are ordinary, and require medium ability in the Judge passing upon them. There are rare cases, involving questions of commercial and constitutional law, which require great ability, of course.

Q. Do you know that Justice McKee has very often, during the last twelve months, performed the duties of Chief Justice because of the inability of Judge Morrison? A. Yes; I have known Justice McKee on the bench to be acting as Chief Justice where I have argued cases.

MR. MCGLASHAN—Are you well acquainted with the present physical and mental condition of Justices Morrison and Sharpstein? A. I see them frequently; I am frequently before them officially.

Q. Will you give us your opinion as to whether, by reason of infirmity, mental or physical, they are incompetent to discharge the duties of their office? A. I think each of these Judges is as competent mentally as he was when he was elected. I do not see any change or deterioration in their mental capacity. Justice Morrison, of course, is laboring under physical ailments. Justice Sharpstein was at one time sick so as to affect his eyes. I have sometimes seen him riding in the Park for his health, and at one time he looked very badly, and had large glasses on to protect his eyes. Since that I have seen him about as usual. I frequently meet him at the rooms of the Bar Association, have argued cases before him, and seen him on the bench participating in the trial of other cases. Those have been my opportunities of judging.

JOHN CURRY.

Sworn.

MR. TERRY—How long have you known Chief Justice Morrison? Answer—I think about thirty years.

Q. Have you been well acquainted with him? A. Pretty well.

Q. Do you know whether he has been attacked by serious disease since

his election as Chief Justice? A. I have so understood, and I have seen him several times.

Q. Have you had any conversations with him lately? A. I do not think I have had any more than merely to say "How do you do?" and pass the time of day with him, since he was attacked. I may have talked with him a minute or two about indifferent subjects.

Q. Have you had sufficient intercourse with him to be able to judge whether his faculties have been impaired by sickness or not? A. I have seen him presiding on the bench, and from that I am able to form my opinion. I argued a case before him and all the other Justices who were present, I think, last Summer.

Q. He did not say anything, did he? A. Yes; he had considerable to say.

Q. Is it your opinion that his mental faculties have been impaired by his disease? A. No. If I had not known that he had been sick I could not have thought anything about it. I thought his remarks at the time I refer to, compared very well with what he was accustomed to say when presiding when well.

Q. Your only knowledge of him lately is derived from having argued one case before him? A. I have been present when other cases were argued; and I was concerned in a case which I did not argue myself—I will not say that Justice Morrison was on the bench in the last mentioned case, however; but I have been present at diverse arguments when he was present.

Q. Are you acquainted with Justice Sharpstein? A. Yes.

Q. How long have you known him? A. I think as long as fifteen years.

Q. Have you had any conversation with him lately? A. Yes. I have talked with him several times lately.

Q. On what subject? A. I have not discussed law questions with him, but I have talked with him on various subjects I can not now mention.

Q. What would be the length of the conversations you had with him? A. I have talked with him ten minutes sometimes, and sometimes perhaps fifteen.

Q. Just upon the general news of the day? A. Subjects of interest; I do not remember them now. It was not mere gossip; it was perhaps discussing some question.

Q. Do you know whether he has done any work as Justice for the last twelve months? A. Only by hearsay.

Q. Do you know of any opinions that he has written? A. I do not read opinions.

Q. That is not an answer to the question exactly? A. No, I do not know. I have heard of his writing opinions, but I have not read an opinion of the Court, I think, in ten years. I have heard them read, and I think I have heard some of his read.

Q. How many of his do you think you have heard read in the last twelve months? A. I could not say.

Q. Do you think as many as two? A. I could not say certainly that I have heard one of his read, and I do not know but I have heard several. I have the opinions of the Court read to me sometimes; I am not able to read myself.

Q. Do you recollect of hearing any opinion of Justice Sharpstein read in the last twelve months? A. I could not say positively. Mr. Mizner suggests that I should state that it is on account of my eyesight that I do not read. That is the reason.

T. I. BERGIN.

Sworn.

MR. TERRY—Do you know Justice Sharpstein? Answer—Yes.

Q. How long have you known him? A. Sixteen or seventeen years; perhaps longer.

Q. Have you had any conversations with him in the last twelve months? A. Owing to sickness, I was compelled to leave the city myself last August, and did not return until the thirteenth of July this year. Of course, during that interval, I had no opportunity of speaking with him. Since my return, however, I have had frequent conversations with him.

Q. About what? A. Social, political, and legal matters.

Q. Extended conversations, or just casual? A. Some of them were quite extended.

Q. Do you know of Justice Sharpstein having done any work in his office for the last twelve months? A. During the period of my absence I do not know, farther than that after my return I undertook to see what the Supreme Court had been doing while I was gone, and hastily read the opinions which had been rendered.

Q. In those opinions did you read any by Justice Sharpstein? A. I think I did.

Q. How many? A. I could not state. I did not give particular attention to that.

Q. Do you think as many as three? A. As I say, I could not state, for I did not undertake to examine with reference to that; that was not in my mind at the time I was looking at the opinions.

Q. The opinions of the Supreme Court were published in the *West Coast Reporter*, were they not? A. Yes, and in the *Bulletin* and *Chronicle*.

Q. They were all published in the *West Coast Reporter*, were they not? A. During what period?

Q. All the opinions delivered by the Supreme Court to the time of the destruction of the Bancroft printing establishment were published in the *West Coast Reporter*, were they not? A. While I was away there occurred a break in the publication of the opinions of the Supreme Court that I was in the habit of taking, and there was some little confusion; so I cannot say that I have yet read all the opinions that were rendered during my absence, but such as were published in the books that I had, I read.

Q. Has Justice Sharpstein written any opinion at all in the last twelve months, except an opinion in the case of *Harmon vs. Ashmead*, occupying but little over a page, and an opinion dismissing the appeal in the case of *Little vs. Jacks*? A. As I have already stated, my attention was not particularly directed to the number of opinions prepared by him. I paid no particular attention to the name of the Justice by whom the opinions that I read were prepared, and therefore I could not give a direct categorical answer to the question.

Q. Do you know Chief Justice Morrison? A. I have that pleasure.

Q. Do you know whether his health has been seriously impaired by disease since his election? A. Yes; I am aware that he had a stroke of paralysis some time ago.

Q. You say you have been absent the most of the time during the last twelve months? A. I was absent from the eleventh of August, 1885, until the thirteenth of July, 1886.

MR. MCGLASHAN—I should like to ask you what your opinion of the mental competency of Justices Morrison and Sharpstein is, and whether they are mentally capable of discharging the duties of their office at pres-

ent? A. I can only give an opinion, of course. I have not yet risen to the bad eminence of being a Judge. I knew Chief Justice Morrison before he went on the bench; I knew him as a practicing member of the bar, and when he was an Assistant United States Attorney. I knew him and practiced before him while he was Judge of the Fourth District Court, and I have had occasion, of course, to practice before him since he has held the office of Chief Justice. I have argued cases before him, and several important ones, since he was stricken with paralysis; and from all that I can say that I could not detect any difference in the mental capacity of Justice Morrison. As to Justice Sharpstein, I knew him as a member of the bar before he was Judge of the Twelfth District Court, and practiced before him. I used then to have much more frequent intercourse with him than I now do. I have also known him since he has been on the Supreme bench, and have had frequent occasion to practice before him. I have been unable to discover any difference in his ability, mental or physical, since my return, to fully discharge the duties of his office. I consider that both Justices are mentally as fully capable of performing their duties now, as they have been at any time since I first knew them.

Q. There is a great deal of business before the Supreme Court, is there not? A. Yes.

Q. The business is very much behind, is it not? A. I believe it is. But I do not at all consider that that is justly ascribable to the members of the Supreme bench. I think there are very good reasons why there is such a large arrearage of business in the Supreme Court. When the present Court took office it had a large legacy of old cases. Its jurisdiction was very much enlarged in original proceedings—proceedings in mandamus, quo warranto, certiorari, and prohibition. In fact, since the organization of the present Court, I verily believe the Justices have had more to do in exercising and passing upon these extraordinary or prerogative writs than almost any Court that I know of on earth. In the previous history of the State it was a very unusual thing to have any of those writs, except that of mandate; certiorari, quo warranto, and those other exceptional writs were very rarely used. Of course that has taken up a vast amount of the time of the present Court. To give you an illustration: I had a case involving the legality of an issue of bonds of the County of Santa Cruz. I supposed that the real question in controversy was one at law which could be decided upon a demurrer to the petition, and a demurrer was interposed. But when I thought the matter was going to end there I was very much mistaken. Issue was taken on pretty much everything alleged in the petition, except the existence of the County of Santa Cruz and of the railroad company, practically a general issue. The evidence had to be taken, arguments were made on this motion, that motion, and the other motion, and it took, I think, over three years to dispose of that one application. So that was a very laborious case. Chief Justice Morrison wrote the opinion in it, and Justice Sharpstein concurred.

Q. When was that? A. The case is reported in the 64th or 65th Cal.

Q. Some two or three years ago? A. About two years, I think. I only mention these facts as showing a reason why there is such an arrearage of business in the Court. And, in addition, when the present Constitution went into operation it was new; its provisions had received no construction; every one was in the dark, practically, and anxious to have a judicial and definitive decision upon its meaning, and more especially with reference to questions of taxation, etc. It is no secret that all those discussions were very elaborate and heated, and involved much time and labor. In addition to all that, the population of the State has been on the increase;

and consequent upon it the amount of litigation and volume of business of the Supreme Court has also enlarged. So I do not consider that the apparent arrearage in the business of the Court is justly chargeable, altogether, to the Justices.

Q. We are not charging it to any one, but simply asking if it is not a fact that the business of the Supreme Court is very much in arrear? A. It is in arrear.

MR. TERRY—If Justice Sharpstein has been in full possession of his mental faculties and not physically ill, how do you account for the fact that he has only written two opinions in twelve months, and those very short? A. Some Judges do not write opinions as much as others. I might illustrate by yourself. While you were on the Supreme bench, I think the number of your opinions would not compare with that of your associates. And I can also instance a gentleman whom we all regard as preëminent in the profession and on the bench: Justice Field. If you compare the number of opinions written by Justice Field with the number written by his associates respectively you will find it less, but you would hardly convict him of incapacity because of that; for I think we all acknowledge that he is a gentleman of very superior ability.

Q. Do you think any one after reading one of his opinions would come to the conclusion that Justice Field lacked in capacity? A. I think not.

Q. You do not think that possible? A. No. Whether you agree with him in the law as applied to the facts, you generally find pretty correct law laid down assuming his premises to be well founded.

Q. The business of the Supreme Court being very much in arrearage, how do you account for the fact that a Justice in possession of his mental faculties and not physically ill only writes two little opinions in twelve months? A. I do not see how that would necessarily involve mental incapacity.

Q. It would involve either want of ability or indisposition to labor, would it not? A. It might be owing to sloth, or to a great many causes that would not at all involve incapacity.

Q. Do you not know that during 1882, 1883, and 1884, Justice Sharpstein wrote his full share of the opinions written by the Court? A. I think Justice Sharpstein has always performed his full share of the duties of Justice on the bench.

MR. GREGORY—Do you think that he has performed his share of the duties during the past year? A. For the reason that I have already given (by absence), I would be unable to say. And a perusal of the opinions of the Court would not necessarily show to what extent he may have labored. He may have concurred in opinions, although not writing many himself; and before a Justice will concur in an opinion he has to examine it. Sometimes he may concur on the reading of the opinion simply; at other times he may conceive that there are positions taken to which he can not assent, and that may involve an extended independent examination on his part before he can subscribe to the opinion. Those are matters that you can not very well decide from a mere inspection of the written opinions. There is a vast amount of labor which a Justice may perform that you can never tell from a mere inspection of the opinions of the Court.

MR. TERRY—In the last four months Justice Sharpstein has written no opinions at all, has he? A. As to that I have already stated my knowledge.

Q. You gave it as your opinion that he has performed his full share of the work; I would like to know your information on that point? A. I have stated my absence during a large part of the past year, and since my

return I have not examined to see, nor could I state how many opinions Justice Sharpstein did write during that time.

MR. ASHE—When did the present Supreme Court enter upon the discharge of its duties under the new Constitution? A. On the first of January, 1880.

Q. Have you any idea how many cases were on the docket at the time the Court went into office? A. Not the exact number. My knowledge is simply that of the profession, who are obliged now and then to inquire about those matters; but I never made any inquiry as to the exact number.

Q. Was not the business very far in arrears at the time the Court commenced operations? A. Yes. My understanding is that the Court did not take up new business—appeals that reached it after its organization—for two years; that the time was taken up in disposing of the old cases and of the applications made to the Court in the exercise of its original jurisdiction.

Q. Do you know how many cases there are on the docket of the Court at the present time? A. I do not.

Q. I do not ask you to be exact? A. I know that the calendar of the Court is heavy. The calendar for the present term at San Francisco is quite a lengthy one, occupying a number of pages, but I could not now state the number of cases. My idea would be that there are from one hundred to one hundred and fifty, but that is a vague statement without undertaking to be certain.

MR. TERRY—You speak of the Court not taking up new cases for some time after its organization. Before the adoption of the present Constitution were not cases placed on the calendar of the Supreme Court by the Clerk whenever the record was filed with him? A. Yes.

Q. Have not the present Justices, because of the provision in the present Constitution requiring them to make affidavit that they have decided all cases which have been submitted to them for ninety days, before they can draw their salaries, changed the old rule and directed the Clerk to only place on the calendar as many cases as they think they can dispose of in that time? A. I believe they have adopted some such rule.

Q. And the consequence is that cases appealed do not go on the calendar for a long time after the record is filed? A. Yes. I think, as a practical mode of disposing of the business, it would be much better for the learned Justices to only hear as many cases as they can promptly decide without allowing them to accumulate on their hands. That, of course, is simply an opinion as to the way in which they should do the business.

Q. Under the old organization of the Court all cases were put upon the calendar that were not submitted, were they not? A. I am hardly prepared to assent to that broad statement.

Q. Was not the Clerk required to put them on the calendar? A. It is one thing to require and another to have it done. I think within my own experience that was not always done.

Q. By the present Court only a certain number of cases have been put on at each calling of the calendar? A. I believe so.

Q. So that only a certain number could be submitted? A. Yes.

Q. And it has been a constant practice, if there were any cases not determined when the ninety days were about to expire, to order them to be heard in bank? A. About that I could not say. Where a case is heard in department there must be a concurrence in opinion of three Justices, otherwise the case must go to the Court in bank.

Q. Is it not of frequent occurrence that a case which has not been decided in department at all has been ordered to be heard in bank? A. The busi-

ness is generally distributed to the departments, and cases assigned to the Court in bank only on the order of the Chief Justice on special application.

Q. Is it not a very common proceeding, where a case has been argued and submitted in department, and the ninety days are about to expire, and no decision has been made, for it to be ordered to be heard in bank? A. Of course if the Justices can not agree there can not be a decision. A decision can only be reached by concurrence in opinion. If the Justices do not agree in department the case must go to the Court in bank.

Q. But have not cases been ordered to be heard in bank where the departments have not taken them up at all or looked at the record? A. About that I could not say.

Q. Have you not very frequently been waited on by the Bailiff of the Court with a request to move that the submission of a case be set aside and that it be resubmitted at a certain date? A. That sometimes happens.

Q. Lawyers always consent to it, do they not? A. They generally consent. But I do not think that that would argue any incapacity in the Justices.

Q. I am not asking what it argues, but simply asking as to the fact? A. As you know, you may sit down to prepare an opinion and almost conclude it when a proposition will occur to you that shows to your mind at once that the position you had been taking is not tenable, and you will have to tear up that opinion and start in *de novo*. I know that has very often happened to myself in preparing briefs. I would carefully examine the case and think I had fully mastered it, and had the controlling legal points involved, and prepare my brief, and almost conclude it when a proposition would occur to me which showed that the position I had taken was not tenable but could be overthrown. I would then simply have to tear up my previous work and go through the labor of revising the whole scheme of the argument.

MR. GREGORY—I should like to ask you if, in your opinion, Chief Justice Morrison and Justice Sharpstein are mentally and physically competent to perform the duties of their office, and I would like a direct answer? A. I consider that Justice Sharpstein is; and I consider that Chief Justice Morrison is, although not to as great an extent as at a previous period in his life. That is to say, his mental capacity is as great, but probably owing to his physical infirmities, he may not be able to do as much physical labor as he has been able to do in former years.

MR. ASHE—Since the present Court was organized has the business, owing to the grave questions that arose under the new Constitution, been increased to an extent greater than previous to the adoption of the organic law now existing? Is not the number of cases very much greater? A. Very much, indeed.

MR. DAVIS—Owing, not only to questions that have arisen under the new Constitution, but also to an increase in the population of the State? A. Certainly; and so far as the Constitution itself is concerned, questions with reference to revenue, double taxation, the Board of Equalization, debris, and to what extent the charter of the City and County of San Francisco was affected, etc., have been presented to the Court for determination, requiring time and careful examination for their decision.

L. B. MIZNER.

Sworn.

MR. TERRY—How long have you known Chief Justice Morrison? Answer—About forty-three years.



Q. Have you been intimately acquainted with him? A. Very; we were born in neighboring counties.

Q. Have you seen much of him for the past twelve months? A. Yes; I have seen him almost constantly.

Q. Do you know that he was afflicted with a severe physical illness some time ago? A. Yes; I was called to his bedside immediately after the attack.

Q. What effect has that had upon his physical and mental faculties? A. I think it has had no effect whatever upon his mental powers; it has upon his physical.

Q. Do you think his mental powers as good now as they were before he was attacked? A. I do. Possibly there may be some little difference in this: that he cannot get around as rapidly as he did before. He was an active man before.

Q. Is not memory affected? A. I think not.

Q. Is he just as able to keep up the thread of a thought and to follow an argument as he was before? A. In all conversations that I have had with him I have detected no difference with respect to his memory. He referred to matters that occurred long ago, when we were boys together at college, with the same facility that he did before his sickness. His memory seems to be perfectly bright in that respect.

Q. Do you know Justice Sharpstein? A. My acquaintance with Justice Sharpstein is not of so long standing as with Chief Justice Morrison. I have had a passing acquaintance with Justice Sharpstein for ten or twelve years, I think.

Q. Have you had much conversation or intercourse with him lately? A. Very little. I only see him at the Law Club in San Francisco.

Q. Are you able to form an estimate of his faculties now as compared with what they were at the time he was elected? A. I think not. Here is a long decision, published in the *Bulletin* last January, occupying a column, written by Chief Justice Morrison, and one rendered in May by Justice Sharpstein.

Q. What are their titles? A. That rendered by Justice Sharpstein, May twenty-first, is in *Little vs. Jacks*. That rendered by Chief Justice Morrison, January twenty-eighth, is in *McDonald, Administrator, vs. Maria A. Burton*, in which there seems to be a great many quotations.

Q. It seems to be principally made up of quotations of the record, does it not? A. There seem to be several quotations in it. But four of the Justices concur in the opinion; one specially and the others generally. I met Judge Morrison last evening, in the Occidental Hotel, enjoying himself with members of the Grand Army. I was there with Justice Ross, about ten in the evening, I think, and I went with Judge Morrison to his room. I saw no difference whatever in his mental capacity.

MR. GREGORY—Is he able to go from his room to his office without assistance? A. Yes; he generally rides in the elevator, but I have seen him walking up the stairs. I have seen him going up the steps to the Court-room, on Post Street, where he has to ascend one flight to go to the elevator.

Q. Then he has no attendant when going around? A. Sometimes a friend goes with him, but generally he goes alone. His wife, I believe, never goes with him on the street. When she is with him he goes in a carriage.

Q. That is, on account of physical, not mental, infirmity? A. Physical infirmity entirely. He can not control the four fingers of his left hand entirely, and in writing he will put a weight on the paper to assist his right

hand. And his left foot seems to be impaired in vigor in some kind of way which makes him shuffle, and he moves slowly. It seems fair to say to the committee that he appears rather depressed; not as jovial and jolly as when I saw him, during the Mexican war, in the heat of battle at Buena Vista, in 1847, as an Illinois volunteer.

MR. GREGORY—Paralysis has not affected his speech, has it? A. Not in the slightest.

MR. TERRY—It did for awhile, did it not? A. I believe it did. He was confined to his bed in the Occidental Hotel, and on his back, for several months.

Q. Within the last six or eight months, has not his speech been affected? A. I think not, in that time. But during the time he was sick, which I think was two or two and a half years ago, I believe that his speech was slightly affected. I have not noticed it in the last year, though possibly a stranger might. I have been with him so much, and seen him so often, that perhaps I would not notice it.

W. S. Wood.

Sworn.

MR. TERRY—How long have you known Chief Justice Morrison? Answer—About thirty years. He was District Attorney of this county when I was a law student. I have known him since then, though for nine years I resided out of the State. Since then I have practiced before him, in both the District and the Supreme Courts.

Q. Have you been frequently with him lately, or since his attack of sickness? A. I have seen him occasionally. During the last Summer his family spent the vacation in the same place that mine did, and I was there quite frequently. During that time I took occasion to talk with Judge Morrison. I saw him sitting and walking about the grounds, and talked with him quite frequently; sometimes had quite extended conversations.

Q. What effect has his illness had on his physical and mental faculties? A. I do not think it had any effect whatever upon his mental faculties. The effect on his physical faculties has been described by the other witnesses, and in that description I concur. He walks with some difficulty, but he goes about alone. He does not walk very rapidly, but there does not seem to be any trouble with him physically, except that he has a halt in his left leg, and is unable to use his left arm.

Q. Do you know Justice Sharpstein? A. I do not know him so well as I do Judge Morrison, but I have known him eight or nine years.

Q. Do you know of his having been ill a short time ago? A. Yes. I know that he was sick quite a long while.

Q. Do you know what his mental and physical condition have been for the last twelve months? A. I know he was sick, but he seems lately to have recovered.

Q. For six or eight months or more he has been sitting on the bench with the other Justices and hearing cases, has he not? A. Yes.

Q. Do you know of his writing any opinions in that time? A. I do not remember, and would not like to say whether he had or not. My attention was never called to it until I heard the question put to the other witnesses.

Q. Do you know anything with reference to what work he has done in the last twelve months, beyond sitting on the bench with the other Justices?

A. I only know from the published opinions.



Q. Have you seen any published opinions written by Justice Sharpstein?  
A. I do not recollect any now. I think I have seen notes of his concurring in various opinions; and I take it for granted that he did the labor necessary to inform himself about the case before he concurred in the opinion.

Q. What evidence have you of that? A. None, other than seeing his name signed.

Q. What evidence have you that he took the labor necessary to inform himself before he signed opinions as a concurring Justice, or is that merely a surmise on your part? A. I believe every Justice of the Supreme Court who has ever signed his name as concurring in an opinion has informed himself with respect to it. I believe it of yourself, and of every other gentleman who has ever sat on the Supreme bench.

Q. But you do not know it? A. No.

Q. You never saw Justice Sharpstein reading or examining any opinion, did you? A. No. I am not admitted to the councils of the Justices.

JOHN MCCOMBE.

Sworn.

MR. TERRY—You reside in San Francisco? Answer—Yes.

Q. What is your business? A. Real estate.

Q. Do you know C. J. Morrison? A. Yes.

Q. How long have you known him? A. Probably fifteen or sixteen years.

Q. Have you been intimate with him? A. No.

Q. Have you seen him frequently lately? A. Only occasionally.

Q. Have you conversed with him? A. No.

Q. Are you able to form any opinion as to the condition of his mind now? A. No.

Q. Do you know Justice Sharpstein? A. I do.

Q. How long have you known him? A. Ten, twelve, or fifteen years.

Q. Have you been intimate with him? A. Yes.

Q. Have you frequently seen him lately? A. Yes.

Q. Have you conversed with him? A. Yes.

Q. About general subjects or particular matters? A. The last conversation I had with him was specially about his health.

Q. What was the condition of his health, according to his statement then? A. The day after I saw the report of this investigating committee being appointed I went to see him to ascertain whether there was any doubt about his mental condition, and I saw him in his chambers. I had previously seen him walking to and from his office. He looked in perfectly sound health, and his mental faculties were as sound as yours or those of any other gentleman here. I could not see the slightest difference in him.

Q. He has been that way for a long time, has he? A. No.

Q. He has been in good health for a long time, has he? A. No, he has been sick.

Q. Did he not state to you that he had not been confined to his bed for over twelve months? A. No.

Q. Do you not know that he has not been confined to his bed for over twelve months? A. I think he has not.

Q. You think he has not? A. Yes, I have met him about the streets; I have seen him occasionally.

Q. Have you seen him sitting on the bench? A. No; I am not a lawyer.

Q. But you have seen him going to the Court? A. Yes.

Q. And walking about the streets? A. Yes.

Q. Apparently in good health? A. Yes; and to-day perfectly sound.

Q. For the last six or eight months you have seen him walking about in apparently perfect health? A. I do not think it reaches back as far as that.

Q. Does it not reach as far back as last January? A. It may be, but I do not remember. I speak more particularly of the last three or four months, because I made it my business to go and see him, hearing that he was getting well; and I found that he was perfectly well, according to my judgment.

Q. You had a conversation with him about his health the last time you saw him? A. Yes.

Q. And his health seemed to be perfect? A. Yes, he walked about his chambers.

Q. You had not noticed anything with respect to his health for the last four or five months, had you? A. No.

Q. It never occurred to you that he was not in perfect health for the last five or six months? A. No.

J. J. PAULSELL.

Recalled.

MR. TERRY—Are you able now to state what number of opinions were filed by the Supreme Court, from the tenth of July, 1885, to the first of August, 1886? A. The books do not run exactly that way. They run from July 10, 1885, to July 29, 1886, in bank; from July 10, 1885, to July 27, 1886, in Department One; and from July 10, 1885, to July 29, 1886, in Department Two; whole number of cases decided, 574; number of decisions in bank, 182; in Department One, 210; in Department Two, 182.

Q. What number of opinions were written by Chief Justice Morrison and by Justice Sharpstein? A. Number of decisions in bank by Chief Justice Morrison, ten; by Justice Sharpstein, two.

Q. Have you the titles of the cases in which Chief Justice Morrison rendered opinions in bank? A. Yes.

Q. Give the dates of filing the opinions, the titles of the cases, and their numbers? A. August 22, 1885, 20,092, *People vs. Price*; August 28, 1885, 20,087, *People vs. Langton*; November 19, 1885, 11,013, *Hall vs. Superior Court*; November 25, 1885, 8,203, *McGee vs. City of San José*; November 26, 1885, 9,710, *Estate of Doyle*; November 27, 1885, 8,981, *Hand vs. Hand*; November 30, 1885, *Moore vs. Clear Lake Waterworks*; January 28, 1886, 9,730, *McDonald vs. Burton*; March 24, 1886, 20,122, *Ex Parte Hang Kee*; May, 25, 1886, 20,111, *Ex Parte Lawrence*.

Q. Now give the dates of the opinions rendered by J. Sharpstein in bank, with the titles and numbers of the cases? A. December 30, 1885, 9,046, *Harmon vs. Ashmead*; May 2, 1886, 9,939, *Little vs. Jacks*.

Q. Now state the number of opinions rendered in department by either Chief Justice Morrison or Justice Sharpstein during the period named? A. In Department One no decisions were written by either. In Department Two eight decisions were written by Chief Justice Morrison and none by Justice Sharpstein. The dates, titles, and numbers of the eight decisions written in Department Two by Chief Justice Morrison are: August 29, 1885, 9,865, *Winsell vs. Commercial Insurance Company*; November 19, 1885, 20,091, *People vs. Sullivan*; November 19, 1885, 8,593, *Peterson vs. Lawretzen*; November 25, 1885, 9,126, *Davis vs. Green*; November 25, 1885,

20,098, *People vs. Lee*; December 12, 1885, 9,099, *Peterson vs. Doe*; December 22, 1885, 8,242, *Campbell vs. Oats*; December 30, 1885, 8,209, *Martin et al. vs. Walker*.

MR. MIZNER—Is this record for the whole State? A. It is supposed to be. The books are kept in triplicate.

Q. Have you a transcript of the record from Los Angeles and San Francisco? A. We have a copy of the record.

Q. Then these are all the cases? A. Yes.

Q. Do the cases which were decided by the Court appear in your statement? A. I was not directed by the questions to take notice of those.

Q. Then you did not notice how many cases were decided by the Court? A. No.

MR. TERRY—I have a memorandum from the Clerk at San Francisco, showing that there were sixty-eight cases decided by the Court. I do not know whether that is correct or not.

MR. MIZNER—You do not know how many of these opinions Justice Morrison or Sharpstein dissented from, do you? A. I know that they have written no dissenting opinion; I took notice that there was none.

Q. How many of these are opinions that Justices Morrison and Sharpstein, or either of them, concurred in? A. I do not know, but a great many.

Q. They must have concurred, to make a majority of the Court, in a great many cases? A. Yes.

Q. Does the record show any number of orders made by the Chief Justice? A. Quite a number.

Q. Have you taken any account of those? A. I have not.

MR. TERRY—There are quite a number of orders assigning cases to Department One and Department Two, some signed by Chief Justice Morrison, and some by McKee, acting Chief Justice? A. Yes.

MR. GREGORY—Do you know how the number of opinions written by Justice Sharpstein compares with the number written by the other Justices? A. Only by what appears on the books.

MR. TERRY—My memorandum shows that the largest number was written by Justice Ross; the smallest number by Justice McKinstry.

MR. MIZNER—Does the number of times that motions for hearing in bank have been granted or denied, or that motions for rehearing have been granted or denied, appear? A. Those orders are sent up as Court orders.

Q. Are they made by the Chief Justice? A. I do not know. They are sent to me as Court orders.

On motion of Mr. Davis, the committee adjourned until ten o'clock A. M., on Saturday, August 7, 1886.

SATURDAY, August 7, 1886.

Committee met pursuant to adjournment.  
Present: Chairman Morris, Davis, McGlashan, Ashe, Gregory, and Henry.

D. B. WOLFE.

Sworn.

MR. TERRY—What is your occupation? Answer—I am now Secretary for the Supreme Court Commissioners.

Q. Are you acquainted with Chief Justice Morrison and Justice Sharpstein? A. Yes.

Q. How long have you known them? A. I have known Judge Morrison twenty-nine years and Judge Sharpstein ten or twelve years.

Q. Have you had much intercourse with them lately? A. Yes.

Q. Within the last six, eight, or twelve months? A. Yes.

Q. What has been the nature of that intercourse? A. A good deal of it has been connected with the business of the Commissioners.

Q. In what way? A. In the details of the business of the office in connection with the Supreme Court, and the opinions of the Commissioners.

Q. What business did you have with the Justices with reference to the Commissioners except to deliver their opinions to the Court? A. I copied the opinions of the Commissioners and delivered them to the departments.

Q. You did not discuss those opinions with the Justices when you delivered them, did you? A. No. But they generally came in and I saw them, and we talked over the details of the business, as far as the number of opinions was concerned.

Q. That is, they inquired of you the number that had been written? A. Yes. Occasionally they inquired how many opinions they had received, and whether the Commissioners had finished their business for the month.

Q. That was about the extent of the conversation, was it? A. That was about the extent of the business conversation. I have met the Justices socially a good deal. I was with Chief Justice Morrison during the vacation. He was at Paraiso Springs when I was there, and I was with him every day and evening for two weeks.

Q. What intercourse have you had with Justice Sharpstein other than to deliver the opinions of the Commission? A. I have met him socially. He comes into the office occasionally and talks over the business with the Commissioners, the opinions that have been written by the several members, and in what departments. I have also seen him at the meetings of the Court in bank when discussing the opinions of the Commissioners.

Q. What is your opinion of the physical and mental ability of Chief Justice Morrison to perform the duties of his office? A. I think his mental capacity is just as good as it ever was. He is ill a good deal; he is not a well man, as far as his physical organization is concerned. But I do not see any difference in his mental capacity, and I am with him a great deal.

Q. Have not the great portion of the duties of the Chief Justice been performed by one of the Associate Justices during the last twelve months? A. The Constitution provides—

Q. I do not ask that, but as to a fact? A. Justice McKee has performed the duties of Chief Justice while Judge Morrison has been sick, and while he has been off on his vacation. While he has been at the springs Justice McKee has attended to it.

Q. Has not Justice McKee been acting as Chief Justice as much as half the time for the last twelve months? A. I should not think for half the time. He has at times, but I could not tell for exactly how long.

Q. What is your opinion of the physical and mental condition of Justice Sharpstein? A. I think his mental capacity is good. He has suffered a great deal with erysipelas and neuralgia in the eyes. At one time his eyes were closed up; that is, he was kept in a dark room. He was in bed at one time, I believe, for a month, and did not come to the office.

Q. When was that? A. Some time during last season; I could not tell exactly the date.

Q. Since last November he has not been confined at all, has he? A. No. I think he has been at the office nearly every day.

Q. And has sat on the bench both at San Francisco, Los Angeles, and Sacramento? A. Yes. And I have seen him in consultation with the other Justices.

Q. Do you know of his having written any opinions during the time? A. I can not recollect the number, but I know he has written some. The opinion in *Little vs. Jacks* I believe was the last one, written in May.

Q. Is not that the only one he has written within the last twelve months? A. There are some others, but I do not know how many. I never looked to see. The opinion in *Little vs. Jacks* I saw the other day, cut out of a newspaper and put in my pocket, with the date. It was written in May last.

Q. Has he written any opinions except that for twelve months? A. I could not tell you, but I think he has written others. There must be others in the *West Coast Reporter* he has written within that time.

Q. Would not the records show it if he has written others? A. Of course.

Q. Well, it appears that the records show that he has only written two opinions since the tenth of July, 1885? A. I do not know how many he has written. I know that he was sick a long while.

Q. But he has not been sick since last October. He has been on the bench whenever the Court has sat since then, has he not? A. I do not know the date exactly, but I know he has been on the bench lately. But he has suffered a good deal with neuralgia in the eyes and cannot do much writing.

Q. Is he still suffering with neuralgia in the eyes? A. His eyes are better now. During this last vacation he went to Byron Springs, and came back much improved. His eyes are a great deal better than they were, and I think he is able to do his work now.

Q. State the number of cases filed in the Supreme Court this year. A. Some time ago Judge Belcher asked me if I knew the number of cases that had been filed in the Supreme Court. I looked at the register and found that from the first of July, 1885, to the first of July, 1886, the number was between eight hundred and nine hundred; I have forgotten the exact figures, but I know it was over eight hundred.

MR. MIZNER—That was during the last fiscal year? A. Yes.

Q. All the business that is done by the Commissioners goes before the Supreme Court? A. Yes. And the Justices look over it just as they look over and examine other papers.

THE CHAIRMAN—About how old is Chief Justice Morrison? A. I should think about sixty—fifty-nine or sixty.

Q. About how old is Justice Sharpstein? A. I think he must be a little over sixty. I should suppose he was, but do not know exactly.

MR. MIZNER—I think he is not that old.

WITNESS—Well, I do not know his exact age.

MR. TERRY—He is in the neighborhood of sixty, is he not? A. I should judge so.

MR. ASHE—Do you know how many cases have been decided by the Supreme Court in the last twelve months? A. I do not know how many have been decided by the Court itself. I know how many the Commissioners have written in that time.

MR. TERRY—How many have the Commissioners written in the last twelve months? A. Over three hundred and twenty. I think three hundred and twenty-seven is the number.

Q. The whole number of opinions given for the last twelve months is five hundred and seventy-four? A. But you understand that there are a great number of opinions written that you never see—opinions that are not concurred in by the other Justices.

MR. DAVIS—Are all the opinions printed, or are they written and simply filed? A. They have been published.

Q. I did not know but there were many cases, which were unimportant, where the opinions were simply filed? A. No. Under the law the opinions are published, in order to show the reasons for the decision; but sometimes a case is decided in department where the Justices do not concur in the language of the opinion written, and the matter will be turned over to another Justice to write another opinion.

MR. MIZNER—All the opinions written by the Commissioners are overlooked, overhauled, and examined thoroughly before the Justices make them the opinion of the Court? A. Yes. I take all the papers, everything connected with the case, to the Justices, and they go all over them.

MR. TERRY—My memorandum shows that in the past twelve months Justice Ross has written sixty-eight opinions; Justice McKinstry, thirty-seven; and the other Justices the remainder in nearly equal number—fifty, fifty-five, and sixty, respectively.

S. C. DENSON.

Sworn.

MR. MCGLASHAN—Are you acquainted with Chief Justice Morrison? Answer—I have that pleasure.

Q. How long have you known him? A. I can not remember the number of years. I knew him when he was District Judge in San Francisco, fifteen or sixteen years ago.

Q. Have you known him recently? Have your relations been intimate with him at all? A. I have seen him quite frequently. I have business with the Court every term here and sometimes in San Francisco; and I see him at other times; meet him casually at the chambers of the Court.

Q. Are you acquainted with his physical and mental condition? A. Not intimately. But I have talked with him and observed him, and I think I can say I know pretty well.

Q. What is your opinion regarding his physical and mental condition, and his capacity to discharge the duties of his office? A. As to his physical condition, I have learned from him that he had some sickness some time ago which confined him for some considerable time and, I suppose, practically disabled him from performing any business for awhile. Since then, he has not seemed to be as active, and cannot walk as well as he used to. But I have noticed an improvement in his physical condition within the last year or two. Mentally, I think he is as bright as he ever was.

Q. Do you consider him mentally competent to discharge the duties of his office? A. I most certainly do.

Q. Are you acquainted with Justice Sharpstein? A. I am.

Q. How long have you been acquainted with him? A. I knew him, also, when he was a District Judge in San Francisco back in the seventies. I cannot remember dates very distinctly, but I think it was in 1873 or 1874.

Q. Have you been sufficiently intimate with him recently to form an opinion as to his physical and mental condition. A. I have seen Justice Sharpstein repeatedly and met him often. He and I are very well acquainted and I have a very pleasant social intimacy with him aside from official acquaintance and always talk with him when I meet him. I met him last Wednesday, but for a few moments only. I think I know what his condition is in a general way.

Q. Will you please state it? A. Justice Sharpstein was quite unwell for a time, as I learned both from himself and others, but has been convalescing and my best judgment is that he has entirely recovered. He was looking very well when I saw him last Wednesday; seemed bright and active. I met him on the stairway; he going up and I coming down, and I thought he looked just as well as he did before his sickness. So far as his mental capacity is concerned, I have not supposed at any time that it was impaired at all, except perhaps when he was sick in bed; and no man, of course, is able to do mental or any other kind of labor when he is confined to his bed by sickness. I do not know how that was with Justice Sharpstein, however, as I did not see him then, but I think he is in both physical and mental health and vigor now.

Q. Then you are satisfied that neither of these Justices is incapacitated, by reason of physical or mental debility, from discharging the duties of his office? A. I have not the slightest ground to suspect, nor do I suspect or believe, that either of them is in any degree incapacitated mentally. As I stated before, Chief Justice Morrison seems to be somewhat lame; but, so far as I understand and know, that does not affect his mental capacity at all.

Q. Nor prevent his discharging the duties of his office? A. I can not see how it does.

Q. Is there anything you wish to state yourself? A. Merely as a citizen and as a member of the bar I would state this: I believe the gentlemen composing the Supreme Court at present have very onerous duties to perform. It is an overworked Court, and it is a half-paid Court. As a citizen and as a member of the bar I desire to put myself on record in that regard; as expressing the opinion that the Justices are not more than half paid, and that every one of them is overworked. If that opinion is of any benefit I hope it will be used.

MR. MIZNER—State what was the salary of the Justices of the Supreme Court of this State when Judge Terry was on the bench? A. I have not referred to the statutes, but my recollection is \$10,000.

Q. Do you know what it is now? A. \$6,000. It ought to be \$10,000 or \$12,000.

MR. GREGORY—It has been admitted here by all that Justice Sharpstein has not been confined to his bed or to his room since last November. How do you account for the fact that while the other Judges have written from thirty to sixty opinions each, Justice Sharpstein has only written two? A. I have no means of information aside from mere hearsay, but my understanding from report and such information as I have, is that while Justice Sharpstein has not been confined to his bed for a long time, he has still been ailing very considerably; that his eyes have been affected, and that

that has prevented his writing opinions. While his physical health has otherwise, perhaps, been sufficiently good, I have understood the treatment of his eyesight has been such as to prevent his writing many opinions. I do not know how correctly I have been informed, for I have no personal knowledge of it, but I understand that that impairment has been removed lately and that his sight has grown better. I must be understood that this is all hearsay, for I know very little about it personally. As a matter of fact, I do not know how many opinions any of the Justices have written, for I never keep a list of that at all. I read the opinions as they are delivered, and at the time I, of course, notice who writes each opinion; indeed, on reading an opinion I usually know whose it is before I come to the signature, owing to the different styles of the different Justices. But I make no note of it in my mind, and never remember who rendered the opinion in any particular case. I do not suppose I could tell now, in a single case, which Judge wrote the opinion, although I must have noticed at the time.

MR. MIZNER—As some of the friends of the Justices are going away on the evening train, I am requested to suggest to the committee that they take judicial notice of the Constitution and the law with reference to these matters. Article VI, Section 4, of the Constitution reads:

"In case of the absence of the Chief Justice from the place at which the Court is held, or his inability to act, the Associate Justices shall select one of their own number to perform the duties and exercise the powers of the Chief Justice during such absence or inability to act."

Section 996 of the Political Code reads:

"An office shall become vacant on the happening of either of the following events before the expiration of the term:

"*Seventh*—His ceasing to discharge the duties of his office for the period of three consecutive months, except when prevented by sickness or when absent from the State by permission of the Legislature."

I have here a dispatch from a member of the bar in San Francisco, which is submitted to the committee for what it is worth. It can, of course, be verified if necessary; but the friends of the Justices do not consider it fitting to pursue this matter farther, and are perfectly willing to stop now and have it ended.

The dispatch I refer to reads as follows:

"Record shows Morrison participated in ninety-six, and Sharpstein in one hundred and five decisions, besides those they wrote since July last year. NAPHTALY."

CHAIRMAN MORRIS—On Monday, as I understand, the committee will have the verified statement of the Clerk of the Supreme Court of the record in all the cases.

On motion of Mr. Gregory, the committee adjourned, to meet at four P. M. of Monday, August 9, 1886.

MONDAY, August 9, 1886.

Committee met pursuant to adjournment.

Present: Chairman Morris, McJunkin, Davis, McGlashan, Gregory, and Ashe.

D. B. WOOLF.

Recalled.

MR. MCGLASHAN—Have you some further facts bearing upon this investigation? Answer—Yes.

Q. Will you please present them? A. I went to San Francisco on Saturday evening. On Sunday morning I met Thos. F. O'Connor, the Secretary of the Supreme Court. He had prepared a statement of the business of the Court participated in by Chief Justice Morrison and Justice Sharpstein, which he handed me, and I went over the books with him myself with reference to part of it. It appears from this statement, that from January 1, 1885, to August 1, 1886, Chief Justice Morrison sat in Court 123 days, wrote 64 opinions, and participated in 175—that is, examined the papers and record, and either concurred or dissented. The number of cases decided in that time was 1,063, and there were 306 petitions for rehearing acted upon and either granted or denied, in which he participated. The number of cases filed from January 1, 1885, to August 1, 1886, was 1,032; and there were on hand January 1, 1885, 1,001, making a total of 2,033 cases. Deducting the cases decided during the time, 1,063, leaves a balance on hand of 970. Cases under submission August 1, 1886, 161. About 100 Court orders are made per year, which do not appear, for extension of time, etc., which are made mostly by the Chief Justice. During the same period Justice Sharpstein sat in Court 142 days, wrote 47 opinions, and acted in 27 Court opinions which were dictated to the Secretary. During that time he also participated in 314 cases, either concurring or dissenting. The Sacramento and Los Angeles calendars are up to date, and there has been no complaint of delay. The San Francisco calendar, upon which the most of the cases are, is behind. I verified a part of this statement by going over the books with O'Connor. It being Sunday, I did not have time to verify it all. But the statement is furnished in the handwriting of the Secretary, who states that if he could have done it yesterday he would have made affidavit to its correctness, and is willing to do so at any time.

MR. MCJUNKIN—How many of the cases now pending in San Francisco were inherited from the old Court? A. I really do not know, and can not tell what business the old Court had on hand awaiting argument at the time of the organization of the new Court; but at the commencement of the January term, in 1878, just before the new Constitution was adopted, there were about three hundred, and after that there were a great number, but I do not know how many. The report I made to the Constitutional Convention was that there were about three hundred at the commencement of the term, and there were a large number of cases inherited.

Q. The number of those is what we wish to know? A. I do not know exactly how many there were.

Q. Do you know of any way that could be ascertained? A. Only by going over the books in San Francisco. I will state, so far as the number of opinions written, or participated in by Chief Justice Morrison and Justice Sharpstein in the time named in the statement made is concerned, I went over the remittitur book myself, and noted every case.

W. E. TAYLOR.

Sworn.

MR. MCGLASHAN—What is your residence and occupation? Answer—I reside in San Francisco, and am a physician and surgeon.

Q. Are you acquainted with Chief Justice Morrison? A. Yes.

Q. And Judge Sharpstein? A. No.

Q. How long have you known Chief Justice Morrison? A. Personally since the first of last January.

Q. What relations, if any, have existed between you? A. At that time I was called to attend him during an attack of illness, and attended him off and on for two or three months.

Q. Until when? A. About the middle of March, I think, when my attendance ceased.

Q. What was the nature of his malady? A. He was suffering from a severe malarial or bilious attack. His liver and stomach were out of order and his kidneys affected.

Q. And you attended him as a physician at that time? A. Yes; it was for that purpose I was called in to see him. It was rather an acute attack, which came on him suddenly, in a day or two.

Q. Is he, or has he been a sufferer in any other respect? A. He is partially paralyzed on the left side.

MR. MCJUNKIN—Has his illness or his paralysis impaired his mental faculties? A. I think not.

Q. Have your relations with Chief Justice Morrison and your knowledge of his case been such that you can give an opinion upon that point as an expert? A. Yes.

Q. And your answer is that his mental faculties have not been in any way impaired by his physical illness? A. Not in the least.

MR. MIZNER—You saw him every day? A. Yes.

MR. MCGLASHAN—Are you treating him at the present time? A. No; I have had nothing to do with him, professionally, since March. I never treated him for his paralysis.

Q. You are acquainted with the nature of the charges preferred? A. Yes.

Q. Are there any other facts bearing on them, within your knowledge, that you care to state? A. None, except that during all my intercourse with Chief Justice Morrison during his sickness—and he was quite ill for a few days—and since, I never observed any mental impairment whatever. His mind, as far as I am able to judge from what I have seen of him, is perfectly clear and unimpaired.

MR. MCJUNKIN—During his illness was there even a temporary mental derangement, such as often occurs in case of sickness? A. None at all.

MR. MCGLASHAN—Are you acquainted with his physical condition at present? A. No; I only see him walking about the hotel.

Q. Is his physical condition such as to incapacitate him from discharging the duties of his office? A. I think not.

JOHN A. STANLY.

Sworn.

MR. MCGLASHAN—I will state as a member of the committee, that I have been requested to ask certain printed questions handed me. I wish to put myself on record as knowing nothing of these questions, and never having seen them before, and I certainly have no desire to ask them; nor

do I wish it understood that they emanate in any way from the committee, because I never was consulted with respect to them. If any other member desires to ask them, or any of them, I have no objection; but I wish to enter my protest against their being considered as emanating from the committee.

MR. MCJUNKIN—I think the most of these questions irrelevant to the purpose for which the Commission was organized. I was not present when they were formulated, but I have read them over.

CHAIRMAN MORRIS—I will ask some of the questions myself. Have Judges Morrison and Sharpstein, for more than a year past, performed a reasonable amount of work? A. I have no personal knowledge of the amount of work they have performed.

Q. Is the decision of two cases in more than a year, by Justice Sharpstein, a reasonable amount of work? A. I should say it was not. Taking any two cases I have ever heard of being before the Court, I should say it was a very small amount of work for a year.

Q. Should a man who decides only two cases in more than a year be retained on the bench? A. No; if he is physically able to do more work he ought not to be.

Q. Should he not be retired, and his salary of \$6,000 a year be better applied than in paying at the rate of \$3,000 for the decision of a single trifling case? A. That is a question of opinion that gentlemen might well differ about.

Q. Is not some degree of physical strength, freedom from disease, etc., essential to clearness of mind and power of application necessary to the efficient and proper performance of the arduous and trying duties of a Supreme Judge? A. I should think so.

Q. Are there not now eight hundred or one thousand cases pending before the Supreme Court? A. I have not the slightest idea, personally, how many cases are pending. I heard Mr. Woolf say there were over nine hundred.

Q. Is not the work before the Supreme Court increasing, and the ability to perform it decreasing? A. I think it is.

Q. Is it not necessary to have able and competent Judges to dispose of this growing mass of business? A. Certainly.

Q. Will not the interests of litigants be materially promoted by a change in the judicial system of this State? A. I think they will.

Q. If the other five Judges did no more work than the two under consideration, would not a deplorable state of affairs ensue? A. I do not know what the two Judges have done; therefor I can not answer the question.

Q. Is not the department system a failure? A. Decidedly so, in my opinion.

MR. MCJUNKIN—What bearing has that on the matters the committee were directed to investigate?

MR. MORRIS—I do not know that it has any.

MR. MCJUNKIN—That properly belongs to an inquiry as to the necessity of some constitutional amendment which may be proposed, but I do not think it has any bearing on the mental or physical ability of these two Justices. I therefore enter an objection to the question, as involving a useless consumption of time.

MR. DAVIS—It may have a bearing in determining why more work was not done.

MR. MORRIS—We will pass that question.

Q. Has the Commission appointed to assist the Court fulfilled expecta-

tions in carrying on the business of the Court more speedily? A. I do not know what the expectations were, and do not know what amount of work the Commission has done.

Q. Has not the Commission done more work than the Court? A. I do not know; I have no idea.

Q. Is it not true that within the past year the Commission prepared more opinions than the Judges? A. I do not know anything about it.

Q. Are the salaries now paid the Supreme Judges sufficient to command the services of the abler class of lawyers? A. Certainly not.

Q. Are not the interests of litigants suffering at this time? A. I think so.

Q. Would it not be important to the interests of the State to so organize the Supreme Court as to efficiently and speedily perform the business of litigants? A. Undoubtedly.

Q. Are there any objections to the reorganization of the Supreme Court at this time? A. I think so.

MR. MCJUNKIN—What are they? A. I think the objection is that if it is reorganized now, it will be said it was for the reason that the Court decided a given case in a given way; that it was not reorganized upon the merits of the questions involved in the reorganization.

MR. MORRIS—Is the present extra session, with comparatively little business to attend to, a better time to reorganize the Supreme Court than the regular session, when there will be more than one thousand bills claiming attention, and a vast amount of other business? A. It would be but for the interposition of that unfortunate state of affairs, that the reorganization of the Court now would be attributed to the fact that it had decided a given case in a given manner.

MR. MCJUNKIN—I move that the last question be stricken out.

MR. MCGLASHAN—It seems to me that all the questions should be stricken out, unless some member of the committee desires to ask them.

[The motion to strike out was agreed to.]

MR. MCJUNKIN—Do you know the mental condition of Justices Morrison and Sharpstein? A. Not personally. I know both well, but have not had five minutes' conversation with either in the last year or eighteen months.

Q. Can you state whether they are permanently disabled, mentally or physically? A. I can only state that up to within a very few days—probably within the last two weeks—it was the generally received opinion that they were permanently disabled.

Q. Physically or mentally? A. Both. But of my own knowledge I know nothing upon that subject.

J. P. HOGE.

Sworn.

MR. MCJUNKIN—Do you know anything about the physical and mental condition of Chief Justice Morrison and Justice Sharpstein at present? Answer—Something, having seen them recently. I frequently see them, but I do not know anything about their condition as a medical man would.

Q. How long have you known them? A. I have known Chief Justice Morrison a great many years—twenty, or twenty-five, and perhaps more—and I have known Justice Sharpstein a long time.

Q. Do you know how long Chief Justice Morrison has occupied a judicial position in this State? A. I think he has been on the bench about sixteen years as Judge of the old Fourth District Court, and as Justice of the



Supreme Court. I have appeared before him many times in both the Fourth District Court, and the Supreme Court. Justice Sharpstein, also, was on the bench of the District Court before he went on the Supreme bench.

Q. Have you noticed any impairment of the mental faculties of either? A. I have not. I can give you my opinion if you desire it. I believe that the mental condition of both is just as good now as it was when the people of the State elected them to their present positions.

Q. With the advantage of having been upon the bench so many years? A. The experience of those years improved them, of course; and I suppose, in the nature of things, they should be much better lawyers now than they were when elected.

MR. MIZNER—Were you President of the last Constitutional Convention? A. I was.

Q. Are you familiar with that section of the Constitution which prescribes the duties of Chief Justice? A. So far as it appears in the Constitution, and so far as my own opinion of what was intended by it, I am.

Q. State what was the intention and the generally accepted construction since by lawyers? A. So far as I know, it was supposed when the departments were established, consisting of three Justices each, and a Chief Justice elected, that it would probably take almost the time of the Chief Justice to attend to his duties as such, independent of sitting in department, hearing arguments, and passing upon cases. It became his duty, under the Constitution, to determine all applications to send cases from department to bank, and necessarily to examine the record and ascertain whether they were of such a character that that ought to be done. That would necessarily involve a great deal of labor. I think the idea was that the principal duty of the Chief Justice would be to hear arguments in bank and determine what cases should be heard in bank, and to attend to other matters pertaining to his position, and to have the management of the whole business of the Judicial Department. I think that was the general idea; it has always been mine. It was not discussed directly to any extent, according to my remembrance, in the Convention, but I formed my opinion from the general expression of the members of the bar on the subject. I do not know but it would practically take all the time of the Chief Justice to preside and hear arguments in bank, and examine the records and participate in the decision of such cases, and to pass upon applications to hear cases in bank, whether its importance required it or not. I think that would take most of the time of any man, to do it as it should be done.

T. B. BISHOP.

Sworn.

MR. McJUNKIN—You are acquainted with Chief Justice Morrison and Justice Sharpstein? Answer—Yes.

Q. How long have you known them? A. I have known them both about twenty years, I think.

Q. And practiced before both? A. Yes.

Q. In the District and Supreme Courts? A. Yes.

Q. You are well acquainted with both? A. Very well.

Q. Both in and out of Court? A. Yes.

Q. Have you conversed with either recently? A. I have seen Chief Justice Morrison quite frequently. There has seldom been two weeks passed that I have not seen him. Justice Sharpstein I see very seldom, but I

have conversed with him and met him perhaps half a dozen times in the last three months.

Q. What do you know about their physical and mental condition now, as compared with what it was years ago? A. Chief Justice Morrison had a very severe illness, and physically is not as strong as he was. But, while he is not a strong man physically, I do not see any change in him mentally, at all. I have seen him frequently in Court, and have met with him. We are both members of the Board of Trustees of the Hastings College of Law, and I have met him at the sessions. I do not see any change in his mind at all.

Q. You do not see any impairment of his mental faculties? A. No. He seems to me to have the same mental faculties now that he did before his illness.

Q. His physical illness has not impaired his faculty of speech, hearing, or sight, has it? A. I have not observed anything of the kind.

Q. Can you say the same of Justice Sharpstein? A. I do not see any change in him. He has been very ill, but seems to me now to be recovered as far as I can tell. Still, I have seen very little of him.

MR. MORRIS—Have the two Justices, for more than a year past, performed a reasonable amount of work? A. I really do not know how much work they have performed; it is impossible for any lawyer to know about that. I have seen them both on the bench when I have been in attendance on the Court, but how much work they have done I do not know.

Q. Is the decision of two cases, in more than a year, by Justice Sharpstein, a reasonable amount of work? A. I should think not.

Q. If the other five Judges did no more work than the two under consideration, would not a deplorable state of affairs ensue? A. I do not know; I cannot tell about that.

Q. Is not the department system a failure? A. I do not think it a success.

J. W. WINANS.

Sworn.

MR. McJUNKIN—Do you know Chief Justice Morrison and Justice Sharpstein? Answer—I do.

Q. How long have you known them? A. I have known Chief Justice Morrison for nearly thirty-six years, and Justice Sharpstein ever since he came into the State; I cannot tell exactly how long that is, but I make his acquaintance shortly after his arrival.

Q. You have known them both as practitioners and Judges? A. Yes.

Q. State fully what you know about their mental condition now as compared with what it has been in years past? A. I do not think it has changed a particle.

Q. State as to their physical condition? A. I saw Chief Justice Morrison shortly before he assumed his duties on the bench, and at the end of his last illness, when he was thoroughly convalescent. He seemed to me to have about the same degree of activity, but was of course to some extent impaired physically and constitutionally; but his mind was just as bright as it ever was, and since then he has been discharging his duties on the bench. He told me at that time—and I have every reason to believe that he is a man of veracity—that he had been incessantly engaged in performing the duties of his station until he was taken sick, and mentioned a very large number of cases in the disposition of which he had been concerned. This was a long time anterior to the commencement of these proceedings.

He said there had been some charges made against him on account of his illness and incompetency, but that he had been just as attentive to his duties, except when confined indoors, as before, and mentioned the fact that he had a great many duties to discharge; that he had orders to make; that he had to attend to the distribution of cases and their assignment to the respective departments, the regulation of matters of rehearing and granting extensions on time, etc.; and that they occupied a very considerable portion of his time. It was what, with a nisi prius Judge, would be chambers work, that kept him employed a good deal of his time; but he was proud to state to me the record of cases in which he had written opinions, and in which he had investigated the facts with the idea of concurring or dissenting in the decision.

Q. Have you noticed any impairment in his faculty of speech, hearing, or sight? A. None whatever; not the slightest. On the contrary, when I last conversed with him he spoke in the same tone of voice and with as much expression and strength as I ever knew in the course of my acquaintance with him.

Q. How with reference to Justice Sharpstein? A. Justice Sharpstein has been ill, but is free from any paralytic effects upon his system. The effects upon his system that disease has produced, to the estimation of a layman, are such as are entirely disconnected with mental action or power. He is a member of the Board of Directors of the Hastings Law School, as I am, and at the last two meetings, at which I was present, I have seen how he acted and heard how he spoke. I saw no perceptible impairment of any kind in any of his powers, except that he was somewhat weakened by disease. His mind is as bright as it ever was, I have no hesitation in saying.

Q. How as to his physical condition? Is he improving in health? A. Very much indeed, apparently. He was perfectly able to conduct the business of the session of the Board of Directors of the Law School, to preside over it, and to express his opinions. Chief Justice Morrison is also a member of that Board, and was present and presided at the last meeting but one, and showed his usual energy and intelligence. I do not think either of them entitled, even for a moment, to be charged with disability, mentally or physically, that would interfere with their retention on the bench.

Q. Then you regard them to-day as competent as the day they were elected? A. Entirely so, excepting so far as weakened by physical disease.

Q. I speak of their mental competency? A. I regard the mind of each of these Justices as being just as clear, penetrating, and far-sighted as when he first went upon the bench.

Q. And sharpened by the experience of years on the bench? A. Yes. As remarked by Colonel Hoge, they have added the experience they have accumulated from long service on the bench, and familiarity with the numerous and perplexing legal questions that arose.

R. C. HARRISON.

Sworn.

MR. MCJUNKIN—Do you know Chief Justice Morrison and Justice Sharpstein? Answer—I do.

Q. How long have you known them? A. Upwards of twenty years. I have known Justice Sharpstein ever since he came to the State.

Q. As a Judge how long have you known him? A. From the time he first went on the Twelfth District Court bench to the present.

Q. Have you practiced before him both as District Judge and Justice of the Supreme Court? A. I have.

Q. What do you know about his physical condition as compared with what it was when he was elected to the Supreme Court? A. So far as his physical condition is concerned, I think Justice Sharpstein is not as strong as he was at the time he was elected, or as he was two years ago. He had an attack of sickness by which he was prostrated and confined to his house for some weeks. He is recovering from that and is now physically capable of attending to his duties. I have met him several times within the last few months. Being a member of the Board of Directors of the Hastings College of Law, I have had occasions to meet with him at the sessions of that Board, and have found him physically and mentally able to attend to all his duties.

Q. What is his mental condition at this time as compared with what it was when he was elected to the bench? A. I cannot see any difference in it in the interviews I have had with him in the last two months.

Q. Or in the Supreme Court? A. No.

Q. Do you think there is any impairment at all in the mental faculties of either Chief Justice Morrison or Justice Sharpstein? A. I have not observed any. I think either as competent and as qualified to decide questions presented as he was when he took his seat upon the bench.

MR. MIZNER—Did you hear Colonel Hoge give his opinion of the duties of the Chief Justice as prescribed by the Constitution? If so, what do you say about the general understanding? A. His statement of what he understood at the time the Constitution was adopted coincides with my own views of the intent of the clause of that instrument referred to.

E. R. TAYLOR.

Sworn.

MR. MCJUNKIN—Do you know Chief Justice Morrison and Justice Sharpstein? Answer—Yes.

Q. You have practiced in their Courts? A. Yes. I have practiced in the District Courts over which they presided, and argued cases in the Supreme Court before them. I have also known them in a friendly and social way.

Q. Have you met them frequently? A. Not infrequently; I cannot say frequently.

Q. What do you know about their mental condition as compared with what it was four or five years ago? A. I have failed to discover any difference at any time that I have talked with Chief Justice Morrison or Justice Sharpstein since their recovery, or apparent recovery, from their respective illnesses. I have not seen Chief Justice Morrison for some weeks; in fact, I cannot now call to mind when I did see him last, but whenever I have conversed with him since his recovery from the paralytic stroke, I have failed, as I have stated, to discover any weakness in his mental power. His disease seemed to expend itself upon the base of the brain, leaving intellection entirely unimpaired. So far as Justice Sharpstein is concerned, I have met him several times recently. His affection seemed to be a neuralgic one, confined to the exterior of the brain. While he was undoubtedly very ill, yet I cannot distinguish a particle of difference in him now and as I knew him before his illness, except that his eyesight seems to be slightly affected.

Q. Is his faculty of hearing impaired? A. Not in the slightest.

Q. Or his faculty of speech? A. Not in the slightest. Neither are they in Chief Justice Morrison.

Q. Do you think his reasoning powers are impaired in the least? A. I fail to discover anything of the kind.

Q. Has Justice Sharpstein manifested any indications of a disease known as softening of the brain? A. I have not seen any symptoms of anything of that kind. As I said before, his affection seemed to be erysipelas combined with neuralgia, so far as I was able to see or hear. I did not see any symptoms whatever of softening of the brain. He seems to be very much the man he was before, with the exception of having indications of some affection of the eye and the front part of the skull.

Q. You studied medicine before you commenced the practice of law? A. Yes; I am a graduate in medicine.

Q. And you say you have not noticed any symptoms of softening of the brain in Justice Sharpstein? A. Not the slightest. I never examined him as a physician with reference to that; nor would I dare to do so; nor would he invite me to.

Q. I am only asking for your observation and conclusions, from your medical knowledge? A. From my observation as a friend, and what little I may know of medicine, I could discover no symptom of that kind.

Q. How was his eyesight? A little impaired? A. I do not know, but one can see that one eye is slightly affected. Whether the sight is impaired I do not know.

Q. Do you know anything about the permanence of his disability? A. I should suppose it was not permanent, because Justice Sharpstein has manifested a decided improvement under my own observation.

Q. Recently? A. Yes. I saw him very soon after he was out of his house, and he seemed to be quite sick then. But since that there has been a steady improvement; he has improved wonderfully within a few months.

Q. Then what is your opinion as to his physical disability? Is it temporary or permanent? A. That is extremely difficult to say. It is not unusual for persons to recover entirely from paralysis, as has been demonstrated in a great many instances.

Q. I am referring to Justice Sharpstein? A. So far as he is concerned, I should say that the evidences are all in favor of his absolute and complete recovery; because he has been improving all the time.

Q. How as to Chief Justice Morrison? A. That, of course, no one can say. But persons do recover from the effusion of blood on the brain; it is absorbed, and evidences of that fact have been discovered. I think it is perfectly apparent in Judge Morrison's case, that the portion of the brain which produces the thought was not affected at all, but there was simply a slight effusion of blood at the base of the brain, without intellection being interfered with.

Q. Do you know the respective ages of the two Justices? A. I do not, and could only guess at it. I never heard either state.

MR. MIZNER—Their ages were established yesterday as being about sixty years.

MR. MCJUNKIN—As to the physical condition, aside from disease, the natural results of age would have something to do. Did you notice whether they are physically disabled or mentally disqualified by reason of age or anything of that kind? A. I do not think they are. I do not think they are mentally disqualified by reason of age or by reason of any present infirmity.

J. M. BURNETT.

Sworn.

MR. MCJUNKIN—You are a lawyer by profession? Answer—I am.

Q. You know Chief Justice Morrison and Justice Sharpstein? A. Yes.

Q. How long have you known them? A. I knew both before they were elected to the District Court bench.

Q. You have practiced before them as District Judges and Justices of the Supreme Court? A. Yes.

Q. Do you notice any impairment of their mental faculties? A. I do not.

Q. Have you seen them recently? A. Yes; and conversed with both.

Q. While off the bench? A. Yes; and I have seen them on the bench.

Q. State fully your opportunities for observation? A. I have met Chief Justice Morrison from time to time in chambers, and also at the Bar Association, and have seen him on the bench. I can say the same of Justice Sharpstein. I have read their opinions. I have seen no indications of decay in the mental powers of either. In my judgment the mind of neither is impaired.

MR. MORRIS—Is not some degree of physical strength, freedom from disease, etc., essential to clearness of mind and power of application necessary to the efficient and proper performance of the arduous and trying duties of a Supreme Judge? A. That is rather a question for the doctors than for me. I should say that a Judge ought to have some mental power, of course.

MR. MCGLASHAN—Do not these Justices have that power? A. Yes.

Q. And they have that degree of physical strength? A. They can both attend to their duties.

C. L. ACKERMAN.

Sworn.

MR. MCJUNKIN—You are a practicing lawyer? Answer—Yes.

Q. Do you know Chief Justice Morrison and Justice Sharpstein? A. I do.

Q. How long have you known them? A. I have known Chief Justice Morrison about fifteen years; I have known Justice Sharpstein ever since he went on the bench.

Q. You have practiced before both as District Judges and Justices of the Supreme Court? A. Yes. In the latter part of June, and in July of this year, I had occasion to meet Chief Justice Morrison at Paraiso Springs, and was in his company for several hours daily. At times he was confined to his room for hours, engaged in study and examination of transcripts or petitions for rehearing sent him. I saw him very often on the veranda, and frequently with briefs in his hand. I know that during all that period he was daily engaged in examining papers that he had brought, or that were sent to him from the city. Whether they were with reference to matters pending before him I do not know, but I think they were transcripts and briefs. I saw him regularly at meals, and conversed with him at times during the day. His mind always seemed to be as clear as a bell.

Q. Have you noticed any impairment in his mental faculties? A. None whatever.

Q. Or in his hearing or sight? A. No; there is nothing noticeable about him, except that he is a little lame, but he can walk about alone and unattended.

Q. Have you noticed any impairment of the mental or physical faculties

of Justice Sharpstein? A. I have seen Justice Sharpstein more or less during the last two years. I took occasion yesterday to call on him, and also on his doctor. It seems that his disease, from its nature, would not affect the mind. He appears to suffer from what is called "shingles," a swelling of the top of the head. That passed into erysipelas, and for the last six months he has been suffering from a neuralgic affection that touches the lids of his eyes, but his eyesight is not in any degree impaired thereby, as I understand. Though the pain occasioned by that neuralgic affection has been at times quite acute, no impression has been made on the brain.

Q. Have you had any social converse with him? A. On numerous occasions. In a conversation with reference to decisions rendered by the Court, he told me that no opinion written by the Commissioners escaped his observation or examination; that he had made a study of every decision, and adopted it as his opinion before he subscribed to it.

W. C. BELCHER.

Sworn.

MR. MCJUNKIN—Do you know Chief Justice Morrison and Justice Sharpstein? Answer—Yes.

Q. How long have you known them? A. I could hardly tell; I should say at least ten years.

Q. Have you practiced before them? A. Before both as Justices of the Supreme Court, and before Chief Justice Morrison as Judge of the Fourth District Court.

Q. Have you recently, or at any time, noticed any impairment of their mental faculties? A. No. I think they are both mentally as competent to-day to act as Judges as they were when they were elected.

Q. State fully your opportunities for observation? A. I have had frequent occasion to appear before the Supreme Court in bank and in department for the argument of cases; and, so far as I am able to judge, both Justices appreciate an argument, and consider a case while being argued, as well now, I think better now, than when they first went on the bench, by reason of their experience.

MR. MIZNER—You heard the statement of Colonel Hoge about the duties of the Chief Justice as prescribed by the Constitution? A. Yes.

Q. Do you concur with him in that? A. Entirely. He expressed much better than I could exactly what I think that provision means.

D. McCLURE.

Sworn.

MR. MCJUNKIN—Do you know Chief Justice Morrison and Justice Sharpstein? Answer—Yes.

Q. How long have you known them? A. I have known Chief Justice Morrison twelve or fifteen years. Justice Sharpstein I have known perhaps ten years.

Q. Have you noticed them recently? A. I have known Chief Justice Morrison very intimately for several years. He lives at the Occidental Hotel, where I live, and I have spent a great deal of time with him.

Q. You have seen him almost daily? A. Yes; and nearly every week he spends one or two evenings in my wife's parlor. Last year I was with

him a great deal, spending six or seven weeks at Paso Robles Springs. I talked with him a great deal about decisions that had been rendered, and about the law of the case.

Q. From your observation have you noticed any impairment of his mental faculties? A. No.

Q. Or any such disability physically as to prevent him from discharging the duties of Chief Justice? A. Physically Chief Justice Morrison suffered a good deal last year and this Spring. The disease seemed to affect one of his arms more or less, but in his mind I saw no change. I may say that I have been very intimately acquainted with Chief Justice Morrison and his wife. I have talked with him a great deal, and conversed with him about his labors and duties as Chief Justice.

Q. From your observation and conversation, what are your conclusions as to his physical and mental conditions? A. I do not observe the slightest change in his mental faculties in the last ten years. He talks as he always has.

Q. What as to his physical condition? A. At the time he was last stricken, which was some time in the month of January, I was at the hotel and saw him nearly every day. I also saw him soon after he recovered, and spent two or three evenings each week with him, for two or three months prior to my going east in June; and since I returned I have spent several hours with him. I see no change in his mind at all, but I have observed that he is physically, perhaps, not as strong as he formerly was.

Q. Is his disability such as to prevent his discharging the duties of the office? A. I should say not. I have not seen any change in him at all for the past two or three years.

Q. You have no hesitation then in answering that it is not? A. Not the slightest. As I said before, I have conversed with him a great deal about opinions that have been rendered, and about the propositions discussed by the lawyers after an opinion was promulgated by the Court, and never observed any change in his mind at all.

W. C. BURNETT.

Sworn.

MR. MCJUNKIN—Do you know Chief Justice Morrison and Justice Sharpstein? Answer—Yes.

Q. You are a lawyer by profession? A. Yes.

Q. You were City and County Attorney of San Francisco for a number of terms? A. Yes.

Q. In the performance of your official duties, as such attorney, you had occasion to appear before the Courts very frequently, did you not? A. Yes.

Q. And you observed the mental and physical condition of these two Judges? A. Yes. But I have not been City Attorney since they have been on the Supreme bench.

Q. But you were City Attorney when one was Judge of the Fourth and the other was Judge of the Twelfth District Court? A. Yes.

Q. Have you observed them recently? A. Yes; within the last year.

Q. Do you notice any impairment in their mental faculties or reasoning powers? A. None whatever.

Q. Or in their faculty of memory? A. I have seen them both in chambers and on the bench, and argued cases before them, and heard other cases argued, in the last year.

Q. State fully what your opportunity for observation has been? A. That is about all that I have had within the last year or two.

Q. And what was your observation? A. I could see no difference in their mental condition. Each seemed to appreciate the arguments made as well as ever.

MR. McGLASHAN—I do not know how the other members of the committee may feel, but I would suggest an adjournment until seven. I would like to consult with them as to how much cumulative evidence we should take on the proposition that there is no foundation for the charges. So far, not a single witness has stated that there is anything in the charges, and I do not like proceeding to prove a negative much farther.

MR. McJUNKIN—There are a great many gentlemen here from a distance, and I think it is due them that they should be examined. We might proceed quarter of an hour longer. How many more witnesses have you, Mr. Mizner?

MR. MIZNER—Only two or three.

MR. McGLASHAN—If only that number, I withdraw my motion. I supposed the rest of the bar of the State were here to be heard.

C. N. Fox.

Sworn.

MR. McJUNKIN—How long have you practiced law in this State? Answer—Twenty-nine years.

Q. How long have you known Chief Justice Morrison and Justice Sharpstein? A. I knew Chief Justice Morrison before he went on the District bench, and became acquainted with Justice Sharpstein shortly after he came to the State.

Q. Have you known them intimately to the present time? A. I have. I can not say that I have seen either since the first of June, or since the Court vacation commenced, but I have been before them both in the District and Supreme Courts very frequently ever since they have been on the bench.

Q. From your observation, have you noticed any impairment of the mental faculties of either? A. None whatever. My observation rather is that they are more ready of appreciation, as the result of experience; that they grasp a point quicker than they did in earlier days. While there has been some physical impairment in the last year or two, since the sicknesses spoken of, it has at no time seemed to me to affect their minds.

Q. From your observation, do you regard their physical disabilities as permanent? A. Speaking with reference to Chief Justice Morrison, I might say that he is, perhaps, in a condition where you might call him a more hazardous risk than when he was elected.

Q. Looking at him in the light of a life insurance company? A. Yes. That is to say, he may never be physically as strong as he was. But I see nothing in his condition to indicate any present impairment disqualifying him from performing the duties of Chief Justice.

J. B. MHOON.

Sworn.

MR. McJUNKIN—How long have you been practicing law in this State? Answer—About ten years.

Q. Do you know Chief Justice Morrison and Justice Sharpstein? A.

Both. I knew them on the nisi prius bench and also in the appellate Court.

Q. And have practiced before them in both Courts? A. Yes.

Q. Have you noticed any impairment of their mental faculties? A. None whatever.

Q. How about their physical condition? A. I think Chief Justice Morrison shows in his manner that he has been sick. I came from Los Angeles last term in the same sleeper with Justice Sharpstein, and judged him to be about as well as he ever was.

Q. What is their mental and physical ability to perform the duties of the office they occupy now as compared with what it was when they were elected? A. I see no difference.

E. J. PRINGLE.

Sworn.

MR. McJUNKIN—How long have you practiced law in this State? Answer—Upwards of thirty years.

Q. Do you know Chief Justice Morrison and Justice Sharpstein? A. I know both professionally; and I knew Chief Justice Morrison pretty well when we were practicing law together. But for about fifteen years I have been residing in Oakland, while practicing in San Francisco, and I have not had much acquaintance with him.

Q. You were partner with Chief Justice Morrison at one time, were you? A. No; we were members of the bar together.

Q. For the past few years what have been your opportunities of observing the mental condition of these two Justices? A. Only such as a practitioner before the Court would have; not any social acquaintance.

Q. From such opportunities of observation as you have had, what is your opinion as to the mental condition of both Justices? A. I have seen no impairment of their mental faculties.

Q. None whatever? A. None whatever.

Q. Are they physically disabled or disqualified from performing the duties of their respective positions? A. Their physical afflictions have been such as to make some impairment before the world.

Q. Are they temporary or permanent, in your opinion? A. Not necessarily permanent. I have not seen any effect upon their minds at all. They have been unfortunate, in that their physical troubles seem to have been more apparent than real, so far as the effect, produced by them is concerned.

MR. MIZNER—These are all the witnesses from San Francisco that the friends of the Justices desire to have examined; but I understand there are two from Sacramento who would like to be heard. I would also like to have it appear on the record that W. W. Cope and John Curry, who testified at the other session of the committee, were at one time Justices of the Supreme Court, as that question was not asked them.

MR. McJUNKIN—If there are any other witnesses we will hear them now.

MR. MIZNER—There are others; but as it seems to be fighting thin air the friends of the Justices did not propose to call them, unless desired.

A. P. CATLIN.

Sworn.

MR. MCJUNKIN—How long have you practiced law in California? Answer—Thirty-seven years.

Q. Do you know Chief Justice Morrison and Justice Sharpstein? A. I have known Chief Justice Morrison about thirty-four years, and Justice Sharpstein about fifteen.

Q. Have you had any opportunity for observing their mental and physical condition within a few months? A. I cannot say that I have since May last. At the May term of this year they were here attending to their duties, and I saw both on the bench, and met them off it in a friendly way, and had some general conversation with them. Chief Justice Morrison presided in Department One in this room—called the calendar and disposed of the cases. I have met Chief Justice Morrison in Monterey, San Francisco, and here since he had his paralytic attack, and I should say that if he and Justice Sharpstein are in as good condition now as they were last May there is no reason to believe there is any difference in them mentally.

Q. No impairment? A. None at all.

Q. Not the slightest? A. I should think not.

Q. You observed them at the May term of this year, held here, discharging their duties as Justices of the Supreme Court? A. Yes; and they performed their duties then as well as they usually have done when here.

MR. MIZNER—I think that is all the testimony that the friends of the Justices desire to introduce. There are several witnesses here who I believe were subpoenaed by the other side—if I may call it that—but as the prosecuting officer does not seem to be present, we would like to know if they will be examined, because a great many of the witnesses who have been sworn and have testified might have something further to say then. We would therefore like the witnesses on the other side, if there are any, to be examined now, that the whole thing may be ended. As it is, we are striking at nothing. The evidence so far is simply cumulative, and we do not care to introduce any more until something is brought out which we wish to answer.

S. HEYDENFELT.

Sworn.

MR. MCJUNKIN—How long have you practiced law in California? Answer—Over thirty-six years.

Q. You have been a member of the Supreme Court yourself? A. Yes.

Q. Chief Justice? A. No.

Q. Associate Justice? A. Yes.

Q. Are you acquainted with Chief Justice Morrison and Judge Sharpstein? A. I have known Chief Justice Morrison ever since he came to the bar, I think. With Justice Sharpstein my intimacy is very slight, indeed; I have probably never had half a dozen interviews with him.

Q. What have been your opportunities for observing the mental and physical condition of Chief Justice Morrison during the past few months or years? A. Within the last two or three years I have had no opportunity at all. I have not had a conversation or interview of any kind with him, nor do I think I have met him, except once on the street.

Q. Have you had any opportunities for observing his mental and physical condition? A. None at all.

Q. Do you know anything about it? A. Nothing within the last two or three years. I used to know Chief Justice Morrison very well at one time,

and we met quite frequently. I sometimes practiced before him, and he was then a pretty good lawyer. But for the last two or three years I have had no opportunity of meeting him, either socially or otherwise, and therefore I do not know what his condition is.

MR. MCJUNKIN—Is this one of your witnesses, Mr. Mizner?

MR. MIZNER—No; I think he was subpoenaed by the other side.

MR. MCJUNKIN—If you know anything about the charges against these two Justices, state it to the committee. A. I do not know anything at all about it.

MR. MCGLASHAN—I do not know whether Judge Terry or any one else will be here to examine the witnesses subpoenaed in support of the charges, but if so they will probably appear this evening; therefore, in fairness to them, I move that the committee take a recess until seven o'clock and thirty minutes P. M., and that Judge Heydenfeldt and the other witnesses so subpoenaed be requested to be present at that time.

Motion carried, and committee took a recess until seven o'clock and thirty minutes P. M.

## EVENING SESSION.

Committee met.

Present—Chairman Morris, McGlashan, Davis, Gregory, Ashe, and McJunkin.

S. HEYDENFELDT.

Recalled.

MR. TERRY—From observing and reading the opinions of the Supreme Court, have you formed an opinion as to the competency of the Justices of that Court to do their work? Answer—It is my opinion, and the general opinion of the bar, that it is a weak Court.

Q. What is the general opinion of the bar, as far as you are informed, as to the competency of Chief Justice Morrison to perform the duties of his office? A. I think that the bar generally have considered Chief Justice Morrison as being a weak Judge, always, and particularly since he has been afflicted. That is the general opinion I have heard expressed. I have had no opportunities, from social intercourse, or from trying any cases recently before Chief Justice Morrison, to form any fixed opinion of my own.

Q. Have you examined any of the opinions written by Chief Justice Morrison? A. I cannot say that I have particularly. I occasionally read the opinions in the newspapers, but I do not fix in my mind what particular Justice delivered them.

Q. I ask you whether or not the business of the Court has not been more in arrear during the last year or two than ever before? A. That, I believe, is the general understanding; that it has been very much in arrear for the last three or four years. I hear members of the bar say that it is about three years behind; that is, that it will take about three years, or near that, to catch up; that if a case is placed upon the calendar now it will probably take two or three years to reach it. I met Justice Sharpstein on Saturday and had a conversation with him about it. I did not recognize him, but he told me who he was. I asked him about the business of the Court, and he said that it was still accumulating. I asked him if the appointment of the three Commissioners aided at all in diminishing the



block upon the calendar, and he said it did not. It struck me very forcibly that unless there was some relief afforded on the part of the governing powers the block would increase to such an extent after a little, that it would warrant something like a revolution.

Q. You have had an experience of several years upon the bench of the Supreme Court, have you not? A. Yes. I served five years upon the bench.

Q. In your opinion would seven competent Justices, men of ability and learning, be able to dispose of the business of the State? A. If the business was properly divided I do not see why they should not. In organizing a Court of that kind I would not limit in number to such an extent as to impose very oppressive duties upon the Justices; because if any ought to be very careful about the rights of people it should be Judges.

Q. During your incumbency, when but three Justices occupied the bench, was there not in the neighborhood of something like five hundred or six hundred cases a year? A. I should think at least that; probably more.

Q. Was there ever such an arrearage of business in the Court then as there has been the last year? A. No; I think it was very rarely that a decision went over a term. I remember, however, that we used to dispose of a great many cases from the bench, which do not appear in the reports at all.

Q. What is your opinion as to whether or not the appointment of the three Commissioners has aided in the disposition of cases? A. My opinion is formed from the reports with regard to the condition of the calendar prior to their appointment and subsequent, and also from the method which is pursued. I judge that the Commission is very little if any aid at all in diminishing the block upon the calendar.

Q. It is a fact that the three Commissioners have written more opinions than any three of the Judges, is it not? A. I do not think that amounts to much; because I assume that the cases are first heard before the Commissioners, at least they examine the record thoroughly, state the case, and write an opinion, and then the matter is examined over again by the Justices; so it is merely two trials of the same case before two tribunals.

Q. Do you think the Justices look through the records in the cases where the Commissioners have written opinions? A. I do not know anything about it, and have no right to think, but I have been informed that they do.

Q. You have been informed that they do go through the record? A. Yes. And that they examine the cases, and sometimes dissent from the Commissioners. The opinions of the Commissioners, as I understand, are not adopted until after examination.

Q. That examination might be simply reading the opinions themselves? A. Possibly.

Q. In your opinion is it necessary that the Supreme Court of this State should be reorganized? A. I think so, decidedly. I think we have about the worst judicial system now that we have probably ever had. I may be allowed to explain that by saying that cases of importance are heard in the separate departments, and, after being elaborated there, are usually transferred to the Court in bank and heard over again. Consequently the same case, whenever of any importance at all, is tried twice; and a great deal of the time of the Court is taken up in that way.

MR. McJUNKIN—I would like to ask you a question or two with reference to dissenting opinions. Is there any benefit derived from dissenting opinions? A. Sometimes.

Q. They can not be regarded as law, can they? A. No.

Q. Do you not think that if the Justices were prohibited from writing

and incumbering the reports with dissenting opinions, it would facilitate business? A. I think it is the right of a Justice to put himself upon record.

Q. With a voluminous opinion? A. I am not in favor of voluminous opinions. I never wrote them myself, and I am very much opposed to them.

Q. I am asking with reference to economy of the time of the Justices? A. The Justices have a right to put themselves on record with regard to any question that has been discussed before them; but I think they ought to do it in a very succinct opinion.

Q. The question I ask is simply with reference to your experience and judgment. To write a voluminous dissenting opinion occupies a good deal of time, and I thought that time could be better employed in examining some new case? A. I could not say about that. But I think it is not at all commendable in the Court deciding the case, or the Judge who dissents, to write a very long opinion. I think there is no necessity for long opinions, unless in some very peculiar case.

Q. What benefit is derived by the people from a Judge putting himself on record in a dissenting opinion? A. I do not know as there is any benefit to the people particularly, except that they can sometimes form their judgment of the man therefrom. And the members of the profession probably know whether it is better reasoning than that of the majority of the Court or not.

Q. Does it not encourage litigation and petitions for rehearing? A. Very likely. But what you have to ask the Legislature to do is, to make provision that there shall be time enough and force enough to attend to the litigation of the country.

Q. What I want to arrive at is your opinion, you having had five years experience on the Supreme Court bench. For myself, I never could see the utility of volumes of dissenting opinions, because they could not be accepted as law. A. That is true. But I will state that the longest opinion I ever wrote while on the Supreme bench was a dissenting opinion.

Q. I had no reference to that at all in asking you the question. A. I understand. It was for the reason that it was a very important question, and I wanted to put myself right on the record that I wrote that.

MR. TERRY—Is it not a fact that dissenting opinions are sometimes regarded by other Courts as better authority than the prevailing opinion? A. Very often, indeed.

Q. For instance, the opinion of Justice Bronson, in 20 N. Y., in the case which involved the extent to which the common law prevailed in New York, is regarded by all Courts now as better authority than the prevailing opinion, is it not? A. No doubt. A dissenting opinion gives another Court an enormous chance of being sustained in deciding the other way; it is pretty good authority where the reasoning is the better reasoning.

MR. McJUNKIN—I never could see the utility of a dissenting opinion, as it can not be accepted as a decision of the Court or as law, but is merely the dictum of one Justice. A. That is true. But you will find dissenting opinions referred to in the opinions of other Courts as being rather the law of the case, as containing the correct reasoning, and as more satisfactory than the prevailing opinion, and being adopted therefor. In that respect, if a dissenting opinion is a well reasoned one, it is useful to other Courts as an authority to a certain extent. And it is nothing more than just to the Judge who writes it, that he should put upon record his views, as much condensed as he possibly can.

Q. Is it any more than the reasoning of any eminent member of the bar who may see fit to write on the subject? A. Yes.

Q. In what respect? A. The Judge, in hearing the case, has been charged with a duty. In the performance of that duty he has heard both sides of the case elaborately argued and has not made up his opinion merely from reading on one side. You find that a great many of these law essays are simply the advocacy by some one of some favorite doctrine of his own. He reads up on his favorite side of the question and gives you a treatise or essay which probably contains everything said of his side and omits all the perhaps better reasoning against it. A Judge can not do that. He has to hear the authorities and arguments on both sides of a case. So when he delivers his opinion, whether it is an opinion that decides the case or a dissenting opinion, it is supposed to be his impartial judgment after careful hearing of both sides. Therefore it is of more importance and more weight than a mere essay written by one who is advocating a certain doctrine.

Q. It would be of no more value than text-book writing, would it, in your judgment? A. It might be. Sometimes you read a text-book and learn nothing from it.

MR. MIZNER—Do I understand you to say that you met Justice Sharpstein last week? A. Yes; I think it was on Saturday.

Q. What was his appearance then? A. He looked first rate.

Q. Intelligent and in health? A. Yes.

Q. He looked very well, did he? A. Yes. I did not recognize him until he told me who he was; then we had a short conversation. He apparently was in first rate health; I never saw him looking better.

Q. You have not met Chief Justice Morrison for a year or two? A. I have seen Chief Justice Morrison but once in two or three years, I think. I met him on the street once when he was going to the hotel.

Q. Then of your own knowledge you know nothing at all about the health or mental capacity of Chief Justice Morrison, do you? A. No.

Q. Except from hearsay? A. That is all.

Q. You have stated, I believe, that it was the opinion of the bar that these two Justices were not competent, or words to that effect? A. I did not say so. I said it was the general opinion of the bar that it was a weak Court.

Q. That applies to all the Court? A. Yes. Taking the Court as a whole, that it was a weak Court.

T. P. STONEY.

Sworn.

MR. TERRY—You are a practicing lawyer in this State? Answer—Yes.

Q. How long have you been such? A. Since 1859, I think.

Q. Are you acquainted with Chief Justice Morrison and Justice Sharpstein? A. Very slightly.

Q. You have had no conversation with them, then, to enable you to judge of their mental qualifications? A. No; I have never had any social intercourse with either.

Q. What is the general expression of opinion of the bar as to the competency of Chief Justice Morrison and Justice Sharpstein, for the last year, to discharge the duties of their office? A. I do not know what I can say about the general expression of the bar.

Q. Expression of opinion, I mean? A. The opinion I derived from

intercourse with the bar was that, for the last year, neither of them had been able to do very efficient service.

Q. State whether you have had the information given you from a credible source, that the other Judges had contemplated making an application to the Legislature to remove Chief Justice Morrison on account of his incompetency?

MR. MIZNER—Is an objection in order, or does everything come in? I certainly object to a question of that kind as wholly inadmissible. What possible chance is there to defend against a question of that kind? It extends this investigation to the bringing up of the other five Justices.

MR. TERRY—Yes; and that is what I think ought to be done.

MR. MIZNER—Is that involved under the authority given by the Assembly in creating this committee? As I understand it, this committee was appointed simply to investigate as to the mental and physical ability of these two Justices—nothing else; not to inquire whether or not their associates contemplated doing something in the dim and shadowy distance, that we cannot reach or defend against in any way. Really, Judge Terry, I do not think you would offer such testimony in a Court of justice where the usual rules of law are applicable. I do not think it is admissible, and I ask the committee to exclude it.

MR. TERRY—I think but a very slight portion of the testimony taken would have been admissible before a Court acting under the rules of law. I do not think Mr. Wilson was qualified to speak of the mental qualifications of the Justices after he had admitted that he had had no intercourse with them for a long time; that he had been sick himself, and read nothing but novels, and that he had simply met these Justices at the Bar Association and at the lunch table, and conversed with them on general subjects solely. But I do not understand that the strict rules of testimony apply to an inquiry of this kind. It is the object of this committee to ascertain facts and to gather evidence. The gentleman has spoken of this entailing the bringing of the other Justices here. It is very strange that lawyers—and all who have appeared here on the part of the Justices are lawyers, and many of them, like my friend Mizner, quite distinguished ones—do not remember the rule laid down in the books on evidence: to prove a fact by the best testimony that is attainable. The very best witnesses to the competency or otherwise of Chief Justice Morrison and Justice Sharpstein are their associates on the bench. They are the witnesses who ought to be brought here to testify on that point, because they have conversed with them with respect to cases and on law subjects, and know whether they can understand the arguments and points in a case or not. The intercourse of the most of the witnesses so far examined has been confined to meeting these two Justices at the Bar Association and saying to them: "How do you do? Fine day; pleasant weather. How is your health?" From such intercourse no one can form any opinion as to the sanity or insanity, competency or incompetency to pass upon points of law, or mental capacity in any respect of either of these Justices. The testimony now offered is just as admissible as the most of the evidence which has been heard by the committee. And it may be well for the committee to require the presence of the other Justices as witnesses; for they are certainly the best that can be had to testify to the mental and physical status of the two concerning whom this inquiry is being made. They necessarily must have been in contact with them in the Court-room and in chambers, and are able, if any one is, to give an opinion of value upon the subject-matter of this investigation.

MR. MIZNER—It appeared in the columns of the press that Judge Terry had subpoenaed all the other Justices.

MR. TERRY—Judge Terry subpoenaed nobody.

MR. MIZNER—I saw it in the papers, and they are generally good authority. It was stated that the Associate Justices of the Supreme Court, with other distinguished gentlemen, had been subpoenaed by Judge Terry. And whether so or not, it strikes me that it was the duty of the prosecutor in this investigation to have subpoenaed them. He has the affirmative, the laboring oar, and he should have produced this testimony. The committee will remember that when he introduced the Deputy Clerk of the Supreme Court, with his books, and introduced Judge Cope, and the case of *The People vs. Sullivan*, he said that was all the evidence he had. It was then the duty of the friends of the Justices to make their points. I think they have done so overwhelmingly. But now, when those witnesses are gone, it strikes me the proposed line of inquiry should not be permitted. It is opening the door so wide that this extraordinary session will have to extend an extraordinary time. I do not think the committee ought to go into the inquiry.

MR. TERRY—The gentleman has quoted from the newspapers, and stated that they are good authority. That reminds me that on the twenty-second of July last the *San Francisco Chronicle*—the newspaper of perhaps the largest circulation in the State—declared that the Supreme Court did not command the respect or confidence of the public; that some of its members were incapacitated by disease, and unfitted for work; that others were of limited capacity, and unable to cope with the important questions brought before them for solution. The *Argonaut*, another newspaper of equal authority with the *Chronicle*, declared that the Supreme Court was composed of a crank or two, a fool or two, and a sick man or two. I do not usually quote newspapers as the very best authority; but as the gentleman has seen fit to, I reply in the same vein. The *San Francisco Report*, the *San Francisco Post*, the *San Francisco Examiner*, and I do not know how many more newspapers, have stated pretty much the same thing as the *Chronicle* or *Argonaut*. I thought, and I still think, that the record of the Supreme Court is altogether sufficient for the purposes of this investigation. So thinking, I stopped with its introduction, after calling Judge Cope for the purpose simply of proving that the two Justices had been sick and making some excuse for their incompetency. When the Judicial Article was before the Constitutional Convention it was objected by some of the members, notably Barbour, of San Francisco, that the term of the Justices was too long. He moved to amend by shortening it to four years, and he gave as a reason the difficulty of getting rid of incompetent Judges, stating that the worst infliction that could be placed upon a people was an incompetent Judge upon the bench. In reply to that, S. M. Wilson, for whose legal opinion every one must have a very high respect, stated that this tenth section of that Article was intended to cover just that case; that an impeachment could only be had for an offense, but under this section the Legislature could turn out any Judge who was inefficient, inattentive to business, or incompetent. Under the construction placed upon it by Mr. Wilson, and adopted by the Convention, I thought that the case was made out whenever it was shown by the records that for the period of a year one of these Justices had written two opinions, and the other eighteen, and those in a class of cases which involved no important interest or question. Therefore I closed. A good deal of testimony has been offered here to contradict the record, introducing the opinion of persons who certainly would not have been qualified to testify as experts, with the exception of my

friend Mizner, who has been an intimate associate of the Justices, and therefore had an opportunity of knowing, and spoke of what he knew. None of the other witnesses had such opportunity of knowing as would enable them to form any opinion of value; but as their testimony has been introduced, I propose to show the opinion of the Associate Justices, who of all men must know; and I think it would be proper for the committee to have them summoned here and examined. They have associated daily with Chief Justice Morrison and Justice Sharpstein, both in Court and in Chambers, where they necessarily were brought in intimate contact, and therefore must be the best witnesses as to their competency.

CHAIRMAN MORRIS—The objection will be overruled and the testimony will be allowed. A. I was told by some one, who spoke from hearsay, that some such matter had come up before the Justices. But I want it understood that Judge Terry did not obtain his information from me. He would not have had it from me.

MR. MCJUNKIN—Did your information come from one of the Justices? A. No.

Q. I do not see the value of it unless you were present at the consultation. A. I was compelled to answer the question.

Q. If there was a consultation of that kind and you were present there might be some value attached to it? A. I was compelled to answer the question, but Judge Terry did not receive his information from me.

Q. I ask you if it came to you from the Justices? A. No. It did not come to me from them.

Q. Before it reached you how many persons had it come through? A. The person who spoke to me I understood had received it from one of the Justices.

Q. Who was that person? A. I do not care to mention.

Q. Who was the Justice named as the one who gave expression to this sentiment? A. I decline to answer that.

MR. MCJUNKIN—I do not see how we can arrive at it. The testimony as given is of no value, being merely hearsay.

JUDGE TERRY—I am not arguing the effect of the testimony now.

MR. MCJUNKIN—Well, I wish to hear what is of weight in the matter, if there is any weight at all, so far as my mind is concerned.

JUDGE TERRY—These are all the questions I desire to ask of Judge Stoney. I would like to have Judge Stanly sent for.

A. L. RHODES.

Sworn.

MR. TERRY—Are you acquainted with Chief Justice Morrison and Justice Sharpstein? Answer—Yes. I am personally acquainted with both.

Q. How long have you known them? A. I have known Chief Justice Morrison twenty or twenty-five years, and Justice Sharpstein fifteen or twenty years, probably.

Q. What is your opinion of the competency of Chief Justice Morrison during the last twelve months to discharge the duties of his office? A. That is a very difficult question to answer; for the reason, among others, that I have seen him but very few times during the last twelve months, and opinions that I may have had are formed more largely upon statements of others than upon personal observation of my own.

Q. You have read the opinions and proceedings of the Court? A. Yes.

Q. And have argued cases before the Court? A. Yes. I have a few

times, within twelve months, seen Chief Justice Morrison and Justice Sharpstein upon the bench, but very little has passed between the Court and myself, the Court and other counsel, or between either of these Justices and myself, or other counsel, during the progress of arguments at those times, and I do not know that I could say from personal observation as to their capacity. But from what I have heard, and in some degree from what I have observed myself, their physical condition was not favorable for work during that time.

Q. Have you not expressed the opinion that these Justices were incompetent and ought to resign? A. Is that really a fair question?

Q. That is for the committee to determine. A. I should not like to answer without stating the facts and circumstances in connection with the matter.

Q. I have no objection. A. Six or eight months ago statements were common and rife among the members of the bar, that Chief Justice Morrison was suffering from the effects of a stroke of paralysis, which, from my limited knowledge of that disease, I assumed, created a permanent disability. If that were true, I thought he should, such being the case, resign. I do not know what his physical disability was, personally; I simply take it from the statement of others, that it was paralysis. I assumed that paralysis affected the brain. I do not know that that is the case, and I assumed so, probably, from statements that were made by others.

Q. Have you not expressed the opinion, since this Legislature convened, that the friends of Chief Justice Morrison ought to persuade him to resign because he was incompetent to discharge the duties of his office? A. To whom?

Q. To any person? A. That is a very general question. There has been a great deal of talk upon this subject; and probably I have, upon the assumption that the statements with reference to his physical condition were correct, and upon the further assumption that the paralysis affected his brain as well as his body. Basing it upon that, I very likely have so stated.

Q. What is the general expression of the members of the bar of your acquaintance as to the competency of these two Justices? A. I do not know that I am in a position to state.

Q. I mean the expression of those whom you have heard speak on the subject? A. I understand; but that expression has been given to me largely in a confidential way.

Q. What? A. I think when statements have been made to me on that subject they have been made confidentially.

Q. I am not asking you to state the names, but simply the expression of the lawyers of your acquaintance? A. I do not know that I am informed as to the general expression of the bar. I have talked with a few attorneys; how many I do not know.

Q. Have you not talked with a great many—has not the subject been often discussed in your presence? A. Such a matter, you yourself must know, would be a subject of quiet conversation among members of the bar.

Q. I am asking what was the common understanding among members of the bar, as to the capacity of these two Justices? A. I do not know that I could state. I think my recollection would be more as to the general impression made upon my own mind.

Q. You know whether the prevailing opinion of those with whom you conversed was in favor of or against the competency of Chief Justice Morrison—of course you do not know all the members of the bar of the State? A. No, I do not know all. My impression now is that the opinion expressed

was more with relation to his physical than his intellectual condition. The last I do not know about, not having had a personal conversation with him, except a word or two, within the last year. His physical condition I know has been spoken of, and I have mentioned it myself to others several times within the year. Either they have said to me or I have said to them, I do not know which, that his physical condition was such that he ought to resign. As I said before, my opinion was more from what I had heard than from what I had seen.

Q. You know that for a great portion of the past year he has not discharged the duties of Chief Justice, do you not? A. He did not seem to me to be discharging the duties of Chief Justice. Often when I have been in the departments, or in the Court in bank, he has not been present.

Q. Has not Justice McKee for a large portion of the time during the last twelve months, discharged the duties of Chief Justice? A. That is the recollection I have.

Q. A list of questions has been asked some of the other witnesses. It is in your discretion to answer, or to decline to answer them, as I put them to you. I ask you whether, in your opinion, the public interest requires a reorganization of the Supreme Court of this State?

MR. MIZNER—I do not know what action the committee took on that list of questions, but I supposed they were all ruled out.

MR. MORRIS—Three or four of the questions were ruled out.

MR. McJUNKIN—As I understand it, the committee was appointed to investigate the charges against the Justices simply, and not the question of the propriety of reorganizing the Supreme Court. That is a matter that should properly come before the House, and this committee has nothing to do with it. No authority was delegated the committee to examine into anything but the physical and mental condition of these two Justices, and their competency or incompetency to perform the duties of their office.

MR. MIZNER—That is as I understand it.

MR. TERRY—The question I have asked this witness was asked Judge Heydenfeldt and several others. I was not aware of any adverse ruling, or I should not have put the question. I think the same question and others in the list were asked and answered by Judge Stanly.

MR. MIZNER—No questions were asked Judge Stanly by us.

MR. MORRIS—There is one of the questions which I will ask this witness. Will not the interests of litigants be materially promoted by a change in the judicial system of this State? A. I think they would.

Q. Are not the interests of litigants suffering at this time? A. Cases are far in arrear. That probably answers the questions better than any other answer I could give. The reason why the interests of litigants would be promoted by a change in the system is because a system could be devised by which there would be more speedy decisions than there can be with the mass of business that is now thrown before the Court.

MR. McJUNKIN—How does the volume of business this past year compare with the volume of business of the old Court? A. I have not kept anything like an account. But the volume of business has been regularly increasing since previous to 1860.

Q. I would like to ask you whether you attribute the delay in decisions to the system of departments and rehearsals in bank, examination of the work of the Commission, and so on, or whether it is largely attributable to the physical disability and mental incapacity, by reason of disease, of Chief Justice Morrison and Justice Sharpstein? A. Answering the last part of your question first, I would say that if one of the Judges is sick, so that he cannot work, it will of course delay business in some degree. I do

not think that the present organization of the Court, with authority to sit in department and in bank, has much increased the labors of the Justices. I think the delays are more largely attributable to there being a larger number of cases, and a greater number of constitutional questions involved.

MR. MIZNER—New questions? A. New questions. I have had but two cases that have not had some constitutional question involved, either directly or indirectly. Such questions, of course, occupy far more time on the part of the Justices than any other class of questions coming before an appellate tribunal. I say that, speaking from my own experience, which I judge to be the same as that of the present Court; and I should presume it to be so in the nature of things.

Q. Have you observed the physical and mental condition of Chief Justice Morrison and Justice Sharpstein for the past twelve months? A. I have seen but little of either personally. I know Justice Sharpstein very well personally, and I meet Chief Justice Morrison occasionally. My conversation with either has not been with reference to legal questions. With Justice Sharpstein my intercourse has always been of a social character, which would give me no opportunity to test his intellectual capacity. One can talk on social matters without being a clear reasoner and without having a good judgment. There has nothing dropped from Justice Sharpstein in my intercourse with him to indicate that there was a lack of intellectual power. He has simply the appearance of a man who is or has been suffering intensely from disease.

Q. What we wish to know is, if there was any impairment of the mental faculties? A. I had no opportunity of judging of that. In a conversation of a word or two about his health, about friends, or about social matters, there would be no opportunity of judging of that; that is to say, there was nothing in the conversations that would involve an effort of the reasoning powers, and therefore they would not indicate whether there was any impairment or not.

Q. Was there any impairment of memory? A. There were several matters spoken of that would involve his memory, and he seemed to be ready.

Q. Did you notice any impairment of that faculty of his mind? A. No. He would speak of matters which had transpired very many years ago, when he was a young man.

Q. Which Justice are you speaking of? Justice Sharpstein entirely. I have had no conversation with Chief Justice Morrison socially, except a word or two; but Justice Sharpstein I have sat by and chatted with ten or fifteen minutes at a time.

Q. From your observation are they in a condition to perform the duties of their office to-day; or were they when you last saw them? A. I could not say.

Q. Mentally and physically, I mean? A. I could not say mentally; but Justice Sharpstein is in far better health than he was a few months ago. I have seen him on the bench many times. I have not heard much talk from him while the case was under discussion. In fact, according to my observation, he speaks very seldom on the bench; and I have had no opportunity of judging of his intellectual capacity, except so far as it would be exhibited in a social conversation, which is scarcely any test at all. I saw nothing to indicate that his mind was impaired. It seemed to me that he was suffering from disease. I thought at the time that I was talking with him he was in more or less pain.

Q. How many years did you serve on the Supreme bench? A. Sixteen.

Q. I want to ask you if the practice of writing dissenting opinions is not

one cause of the accumulation of business; I mean voluminous dissenting opinions? A. Of course it takes time to write a dissenting opinion, and frequently more time than it does to write the prevailing opinion. But it is scarcely modest for me to express an opinion on that, for I think it is known by older members of the bar as to what my course was generally with respect to dissents.

Q. What I want is your opinion from your experience on the bench. I would like to have your ideas on that subject? A. From my standpoint I would prefer very few dissenting opinions.

Q. It is rarely necessary to have a dissenting opinion? A. I could not say whether necessary or unnecessary. Every one must determine for himself. I speak for myself.

Q. What is the utility of a dissenting opinion? A. Sometimes it states the law rightly; sometimes it shows the earnestness with which the prevailing opinion has been contested. In the Supreme Court of this State I have decided the dissenting opinion of other Courts, and sometimes of our own, as being the better law, because the better reasoning.

Q. But it cannot be accepted as law? A. Not in the State in which it was delivered—sometimes it is elsewhere, as the reasoning commends itself to the Justices who are passing on the question involved.

MR. DAVIS—Do you recollect the arrearage of business when the Court of five Judges was organized in 1862? A. Yes, generally.

Q. Was it large or small? A. When I say I remember, I have not a distinct recollection. It is rather an impression. There were between two hundred and three hundred cases I think, possibly more; that is the impression I have now.

MR. TERRY—That is, there were two hundred or three hundred cases upon the calendar when the constitutional amendments went into effect in 1864? A. Yes. On the first of January, eighteen hundred and sixty-four. I am not by any means sure that I am correct in that; my recollection of dates and figures is not good.

MR. DAVIS—I presume the volume of business is constantly increasing from year to year. A. I think each year during my sixteen years on the bench it increased.

MR. McJUNKIN—Is not the reason for that the fact that the old Constitution had been submitted to judicial fire for so long a time that it was pretty generally understood? A. Perhaps so. There were very many constitutional questions submitted to the Court organized under the amendments of 1862, but very few indeed compared with those submitted to the present bench during the same length of time.

MR. MIZNER—Do you remember how many cases were left over when you retired from the bench? A. I do not.

Q. About how many? A. I have an impression that the number was over three hundred.

Q. Left undecided when you retired from the bench? A. I think so, but I am not certain. My recollection of dates and figures is not good.

Q. The bench was then composed of five Justices? A. Yes. I may be wrong by one hundred in my estimate of the number of cases left over.

Q. Do you remember that the Bar Association of San Francisco took action with reference to the threatened amendment to the Constitution looking to the abolishment of the present Supreme Court, recently? A. Yes.

Q. You were present? A. Yes.

Q. A large number of lawyers were there? A. Yes.



Q. A very earnest and solemn protest was there made against the abolition of the entire Court? A. Yes.

JUDGE HAYNE—Judge Curry and yourself were appointed a committee to present it to the Legislature? A. Yes.

Q. You did so? A. Yes; we presented it through a member from San Francisco.

Q. Have you a copy of that protest with you? A. No.

MR. MIZNER—Has any member of the committee a copy of it?

MR. McGLASHAN—It was laid on our desks. All the members of the Assembly have a copy.

MR. MIZNER—That was a protest against any tampering with the Court as it now exists. A. The protest will speak for itself better than I can. I understand it to be based upon a movement against the Court, which, by the manner in which it was attempted to be inaugurated, would impair or destroy the independence of the judiciary; that is to say, upon action having reference to the assumed unpopularity of recent decisions.

MR. MIZNER—Will the committee consider the document in evidence, not to be made a part of the record, but simply to look at it?

MR. TERRY—It is printed in the Journals of both houses.

MR. MIZNER—Then will the committee consider it in evidence?

MR. MORRIS—Yes.

MR. MIZNER—You were asked whether Justice McKee had presided frequently as Chief Justice. You are aware that the Constitution specially provides that the members of the Court, in the absence of the Chief Justice, or his sickness or inability to act, may appoint a temporary Chief Justice? A. Yes.

Q. That is the Constitution? A. Yes; and it is very much to the advantage of the system.

MR. TERRY—About how many members of the Bar Association were present at the time the memorial spoken of was adopted? A. I do not know. The chairs about the hall, the lounges, the billiard tables, etc., were pretty well filled.

Q. Was it not reported that there were but sixty members present? A. I do not think there were as many as that. I did not attempt to count at all, but just speaking from general impression, as I would speak of the number now in this room, I do not think there were as many as that.

Q. Do you know how many members of the Bar Association there are? Are there not more than one hundred and fifty? A. I never heard the number stated and do not believe I ever saw the roll.

Q. Was that protest, or the earnestness manifested at that meeting, with reference to the reorganization of the Court, or to the attempt to reorganize it, because of a decision? A. That was the main point.

Q. It was not with reference to the general proposition as to whether the Court ought to be reorganized or not? A. None at all.

Q. It was a protest against attacking the Court because it had rendered a supposed unpopular decision? A. I think so. I think from the tone of the meeting, if the Legislature at a regular session had sought to amend the Constitution so as to reorganize the Court, not a word would have been said. But, as I understood it, from the sentiment of those present as expressed by the speakers, the protest was because of an attempt to reorganize the Court because of the unpopularity, or assumed unpopularity, or assumed incorrectness, of a recent decision.

Q. Was there not some proposition made to the effect that if this reorganization had been attempted at a regular session of the Legislature, and not

because of a decision, the Bar Association would have appointed a committee to assist in formulating a better judicial system? A. I do not know that I heard that talked of at the meeting, but I have at various other places.

Q. As you understand it, the opposition that was manifested there was not to the reorganization of the Court in a proper manner, or by a proper session of the Legislature, but to the reorganization at a called session, and because of a certain decision, and because the Governor had seen fit to make an attack on the tribunal for the opinion in *Lux vs. Haggin*? A. I think that expresses the idea.

Q. There was no opposition manifested to reorganizing the Court in a proper manner and at a proper time? A. I do not think the Bar Association assumed to say that the Legislature ought not to devise some judicial system differing in a degree from the present one. There was no attempt certainly to dictate to the Legislature what the system should be.

MR. McJUNKIN—Was there a sentiment that a necessity existed for reorganization? A. All discussion of that question was avoided. The members present, in the discussion, said: "We do not discuss the question of the correctness or incorrectness of the decision rendered, or the question whether the Court could be bettered in any degree by a reorganization."

Q. That was entirely evaded, was it? A. It was not evaded, but it was purposely cast aside as being a matter which ought not to be considered for a moment in connection with the question under discussion.

Q. It was simply a question of policy that was discussed, then? A. Of propriety; of the propriety of changing the judicial system because of a decision assumed to be wrong.

MR. MIZNER—The conclusion was unanimous, was it not? There was no dissenting voice to the protest as formulated? A. There was no dissenting voice, word, or even look, that I could see.

Q. That protest was signed by Judge Stoney, as acting President, was it not? A. Yes.

MR. TERRY—Judge Stoney presided at the meeting. Of course he signed it, and O'Brien signed it as Secretary.

MR. MIZNER—Was Judge Stanly present? A. I do not remember that I saw him there.

MR. TERRY—What is the sentiment, if you know, of the members of the Bar Association as to the propriety and necessity of reorganizing the Supreme Court? Are they in favor of or opposed to it? A. I think there are a great many propositions floating around in different circles of members for the reorganization of the Court. In fact, I have scarcely ever known a time when some project was not on foot somewhere to reorganize the Court, whenever it was behind or hard worked—by increasing the number of Justices, limiting the jurisdiction of the Court, or in some way relieving the burden.

Q. What I refer to is the general sentiment of the members of the Bar Association as to changing the personelle of the Supreme Court; whether, in their opinion, it would be advantageous or disadvantageous to the general public? A. I never heard any expression of opinion on that subject at all. It is well known that, having been upon the bench as many years as I have, I have a very friendly feeling towards the Court as the supreme tribunal of the State, and it is not likely any severe complaint of the Court, as a body, would be made to me.

Q. Have you any idea of the number of cases the present Supreme Court are now in arrears? A. No; but from the manner in which the cases are placed upon the calendar, from my own computation of time, commencing at



the date when an appeal is taken, and counting to the date when it is placed on the calendar for hearing, I should think the San Francisco calendar is over one and a half years in arrears. I do not know that I have made the computation within six months, however; perhaps not within a year.

Q. There has been a different rule with reference to placing cases on the calendar since the present Court went into office, has there not? A. Yes.

Q. In former times all the cases were placed on the calendar by the Clerk when the records were filed? A. I think so. That is my recollection of the standing rule.

Q. And all cases were heard at each meeting of the Court? A. As far as could be. I think we had to cut them off by adjournment, sometimes.

Q. But the cases were all called? A. The cases were all called, but they were not always all reached during the term.

Q. The present Court only permits a certain number of cases to be put on the calendar? A. On the San Francisco calendar. In Sacramento and Los Angeles, I understand all cases are placed on the calendar. That is my understanding; I do not know that such is the fact.

Q. In Sacramento they generally place on the calendar fifty, sixty, or seventy cases for a morning session? A. The last Sacramento calendar was not divided into days; I do not remember whether the previous one was or not.

Q. Has there ever been any division into days of the Sacramento calendar, or have more than two or three days been allowed for the Sacramento calendar for the last two or three years? A. I do not remember whether it has been subdivided into days or not. I have attended very few terms in Sacramento and can only speak from general information.

Q. At the last session of the Supreme Court in Sacramento were there not sixty-four cases for the morning session of May fifth in Department One, and sixty-six in Department Two? A. I do not remember the number; I know there was quite a string of cases.

Q. And the Court sat in bank that same day in the afternoon, so that the morning session was only given to those cases? A. I was not present. I heard that the Court adjourned soon after the opening of the term.

Q. Practically is there any argument of cases before the Court except those cases which are appealed to it in San Francisco? A. I have had some very full arguments before the Court here, and before the full bench.

Q. When? A. Two or three years ago, perhaps.

Q. But I mean in the last two years? A. I do not believe I have appeared at Sacramento in the last two years; I do not remember now that I have. The Sacramento cases I have been concerned in I had associate counsel in who came here, but I did not. They were submitted upon briefs filed or to be filed.

MR. MIZNER—When did the rule with reference to holding terms at Los Angeles and San Francisco go into effect? Was it during your term? A. Yes.

Q. How long during your term did that rule obtain? A. I really cannot tell with accuracy.

Q. A very short time, was it not? A. It must have been about three years, and possibly more.

Q. Did not that traveling about delay the action of the Court? A. Materially.

Q. If the sessions of the Court had all been held at the Capital the business could have been dispatched faster, could it not? A. I found much greater progress in Sacramento than anywhere else.

JOHN A. STANLY.

Recalled.

MR. TERRY—Have you expressed an opinion as to the competency of Chief Justice Morrison and Justice Sharpstein to discharge the duties of their office? Answer—I have as to Chief Justice Morrison, not as to Justice Sharpstein.

Q. What was your opinion: that Chief Justice Morrison was competent, or incompetent? A. My opinion was that he was incompetent and incapacitated.

Q. Upon what was that opinion based? A. It was based upon two things: First, the general, almost universal, expression of opinion of the members of the bar of San Francisco until about two or three weeks ago, or until this question was agitated; second, upon information which I had received from credible sources that his Associate Justices upon the Supreme bench had themselves had under serious consideration the question whether they should or should not petition the Legislature to remove him from office by reason of his incapacity.

MR. TERRY—That is all.

MR. MIZNER—Will you state the credible sources that you obtained that information from? A. No, I will not. All of those conversations with members of the bar are of a confidential character; and the fact whether that course had or had not been a subject-matter of consideration by his Associate Justices is capable of easy proof by themselves.

Q. Was Justice Sharpstein included among the number? A. No, he was not.

Q. Then there was one of the remaining Supreme Justices who did not express that opinion? A. I did not say that they all had expressed that opinion; if I did, I made a mistake. I said that the Associate Justices, or some of them, had.

Q. How many? A. I do not know.

Q. Two, or more? A. I do not know; but they had had under serious consideration the propriety of themselves petitioning the Legislature to remove Chief Justice Morrison unless he resigned before the meeting of the next Legislature.

Q. You do not know how many Justices participated in that? A. I do not.

Q. Whether two, three, four, five, or six? A. I do not. The impression made on my mind was that it was all of them except Chief Justice Morrison himself.

Q. I asked you just now if Justice Sharpstein was included in the number, and you said no? A. I did not give the names of any of them, and do not know the names of any; but my impression was, as the information came to me, that all of the Associate Justices, as contradistinguished from the Chief Justice, had had the matter under serious consideration.

Q. This information came from some one whose name you decline to give? A. I do.

Q. He did not state the number of Justices, but you only inferred it was five or six? A. My inference was that it was all.

Q. With reference to the general belief of the bar as to his incapacity, I will read you a few names and ask you if you ever consulted with or heard any of the gentlemen express any such opinion: T. B. Bishop, J. P. Hoge, A. H. Loughborough, R. C. Harrison, E. R. Taylor, W. F. Goad, J. W. Winans, J. M. Burnett, C. L. Ackerman, W. C. Belcher, A. Rogers, W. C. Burnett, W. E. Taylor, James Whitney, William Matthews, C. N. Fox, Warren Olney, J. B. Mhoon, E. J. Pringle, A. P. Catlin, T. B. McFarland,

D. McClure—did you ever hear any of those? A. I do not think I have ever spoken to any of those gentlemen, or any of them to me, upon the subject.

Q. S. M. Wilson, T. I. Bergin, W. W. Cope? A. Yes, as to W. W. Cope.

Q. Hall McAllister, John Curry? A. No.

Q. W. W. Cope is the only one of the list I have read? A. Yes.

Q. What is your opinion that Chief Justice Morrison is incapacitated, based upon—from his physical disability and his sickness? A. It was not from that, for I do not know anything about that.

Q. You have heard of his being paralyzed, have you not? A. Yes. The opinion that I expressed was that he was incapacitated. But I beg to say right here that I never expressed the opinion that he should be removed, unless he was pensioned. Upon the contrary, in the very early stages of his sickness, I advised some of his friends against his resignation, in the hopes that his retaining his position would compel the Legislature to pension him.

Q. Did you hear Dr. Taylor testify? A. I did.

Q. Did you hear him testify about the fit of sickness Chief Justice Morrison had last January? A. I did.

Q. Totally disconnected from paralysis? A. Yes.

Q. Were the conversations, or any of them, you heard, about that time? A. I think not. Almost all the conversations that I have heard upon this subject were from twelve to eighteen months ago.

Q. Do you think that long and protracted sickness tends to incapacitate a lawyer or Judge from discharging his duties? A. It depends entirely upon the character of the sickness. If it affects his mind, I should say it did.

Q. Did it in the case of Chief Justice Morrison? A. I do not know. That is medical testimony.

Q. You heard two Drs. Taylor testify that the paralysis did not affect the mind of Chief Justice Morrison? A. I heard them say so.

Q. That was medical testimony. One of your partners has been seriously ill; so much so as to require him to visit the Sandwich Islands two or three times? A. Yes.

Q. That did not incapacitate him? A. Not in the slightest.

Q. His brain is as clear as ever? A. Undoubtedly.

Q. He was sick a long time, and very seriously, was he not? A. Very seriously for a few days.

Q. So much so that he had to go abroad a few times? A. So much so that I think he was forced abroad by his friends in order to get rest; but his sickness was not of a character which ever affects the intellect.

Q. What was it? A. Simply asthma.

Q. Very weakening? A. Exceedingly so.

Q. And sufficient to prevent his attending to his office business for some time, was it not? A. When he was so unwell that he could not go to the office without danger of aggravating his disease he was kept at home.

Q. But his mind was clear as a bell all the time? A. Perfectly.

MR. MORRIS—Have you any other witness, Judge Terry?

MR. TERRY—I do not know of any.

MR. McGLASHAN—I ask Mr. Mizner if there are any farther witnesses on behalf of the Justices?

MR. MIZNER—Before answering the question I would like to know if the prosecution are through with their case?

MR. MORRIS—I understand they are.

MR. McGLASHAN—Have you any more witnesses, Judge Terry?

MR. TERRY—I have never had any witnesses. I closed with an offer of the record. But I should like to have witnesses who know something about the matter; and the only ones who do know are the Justices of the Supreme Court.

MR. MIZNER—If the committee announces that the testimony is closed on the part of the prosecution, we will reply at once as to what the friends of the Justices have to say.

MR. TERRY—I have no other witnesses here. I would like to have the testimony, if the committee desire it, of those who have been most intimately acquainted with Chief Justice Morrison and Justice Sharpstein during the last twelve months.

MR. MIZNER—It would certainly be a very delicate matter to bring their associates on the bench here.

MR. TERRY—I do not know that there is any question of delicacy about it. I suppose they can be subpoenaed the same as other witnesses.

MR. MORRIS—If there is any further testimony we are willing to hear it.

MR. McGLASHAN—In order to make a test, I move that it is the sense of the committee that no further testimony be taken on either side, and that the committee meet to-morrow morning, at nine o'clock, to prepare their report.

MR. MIZNER—The friends of the Justices consent to that.

MR. McGLASHAN—I will say that, having listened carefully to all the evidence, I can see nothing therein that would justify us in sending for the Associate Justices of the Supreme Court. I do not know of a syllable to justify such a step, but I would like to hear from the other members of the committee, if they dissent from the proposition.

MR. McJUNKIN—Possibly the gentlemen representing each side would like to say something on the question; if so, it is proper they should be heard.

MR. MIZNER—We submit it without argument.

MR. TERRY—I do not wish to make any argument. I do not understand that this committee was appointed to decide any fact, but simply to report testimony.

MR. GREGORY—So far as I am personally concerned I should like very much to hear the testimony of the Associate Justices. If it is possible to bring them here I, for one, would like to hear them. They have been associated with Judges Morrison and Sharpstein, and, perhaps, know more about their condition than any one else. I believe they are more competent to judge of it than others, and I should dislike to see the testimony closed at this time.

The motion of Mr. McGlashan was put, and carried by the following vote:

AYES—Messrs. Ashe, Davis, McGlashan, McJunkin, and Chairman Morris—5.

NOES—Gregory—1.

TUESDAY, August 10, 1886.

Committee met pursuant to adjournment.

Present: Morris, McGlashan Davis, Ashe, McJunkin, and Gregory.

The following report was drawn up and agreed to, and the Chairman directed to present the same to the House:

MR. SPEAKER: Your committee appointed to investigate the charges against Hon. R. F. Morrison, Chief Justice, and Hon. J. R. Sharpstein, Associate Justice of the Supreme Court of the State, preferred by David S. Terry, after full and complete inquiry and the examination of a large number of witnesses, respectfully report:

That the said charges are groundless, the evidence taken and herewith submitted to the House showing neither mental nor physical incapacity on the part of either Justice to perform the duties of his office.

Your committee therefore recommend the adoption of the following resolution, and ask to be discharged from further consideration of the subject:

*Resolved*, That the charges heretofore preferred against Hon. R. F. Morrison, Chief Justice, and Hon. John R. Sharpstein, Associate Justice of the Supreme Court of this State, be and they are hereby dismissed, being wholly unsupported by evidence.

MORRIS.  
DAVIS.  
McGLASHAN.  
McJUNKIN.  
ASHE.

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REPORT OF SPECIAL COMMITTEE

APPOINTED TO INVESTIGATE

Charges Respecting Changes of Positions of Bills

ON ASSEMBLY FILE,

AND ALSO

CHARGES AGAINST MEMBERS OF THE ASSEMBLY.

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## REPORT OF SPECIAL COMMITTEE.

ASSEMBLY CHAMBER, SACRAMENTO, }  
March 2, 1887. }

MR. SPEAKER: Your special committee appointed to investigate charges respecting changes, or attempted changes, of positions of bills on the file of the Assembly, and also charges against members of the Assembly, as directed in resolutions passed by the House, copies of which resolutions are as follows:

WHEREAS, Charges have been made that attempts have been made to change the place of bills upon the files of the Assembly; therefore,

*Resolved*, That a committee of five be appointed by the Speaker to investigate the said charges, and report their investigations to the House at their earliest convenience.

*Resolved*, That the committee appointed to inquire into the charges of changing bills on the file be and they are further directed and empowered to inquire into all charges made, directly or indirectly, against members of this House, and to all facts pertaining to the changing of bills on the file, and they are further directed to report thereon.

Have made a careful investigation of the matters referred to in the resolutions, examining all witnesses fully whom we had reason to believe could throw any light on the matter referred to us:

*First*—There is no evidence before the committee to show that any member of the Assembly has been guilty of attempting improperly to have the position of any bill changed on the file, nor to show that the position of any bill has been so changed, and all members of the Assembly should be exonerated from any such charge.

*Second*—We are satisfied, from the evidence before the committee, that attempts have been made to tamper with the files while they were in course of preparation.

*Third*—It appears from the evidence that, on one occasion, while the file for the succeeding day was in course of preparation, some person misplaced several leaves in such a manner that, had it not been discovered before the file was printed, a great number of bills would have been thrown out of their proper places on the file, but we were not able to obtain any evidence to show who the guilty party is.

*Fourth*—We are satisfied, from the evidence, that Ray Falk, one of the Assistant Clerks, willfully and wrongfully attempted to change the position of Assembly Bill No. 179 on the file, while the file was in process of preparation, on the eighth day of February, for the following day. This, we think, is fully established by the testimony of Assistant Clerks Smith and Brandon, of Chief Clerk Ryan, and of Mr. Falk. Indeed, we think that the conclusion is irresistible from the testimony of Mr. Falk himself.

*Fifth*—We think, from the evidence, that all the clerks, except Mr. Falk, should be exonerated from any charge or suspicion of improperly changing or attempting to change, or to have changed, the position of any bill on the file.

*Sixth*—There is no evidence before the committee inculcating any attaché of the Assembly or any committee clerk, except Ray Falk.

*Seventh*—We think that Mr. Allen Henry should be exonerated from any charge of improper conduct with regard to Assembly Bill No. 16.

*Eighth*—We believe from the evidence that L. E. Bulkeley attempted to influence Assistant Clerk Smith to advance improperly Bill No. 295 on the file, but there is no evidence that the bill was so advanced.

*Ninth*—The committee believe, from the evidence, that Senator Moffitt attempted to influence Assistant Clerk Smith to displace Assembly Bill No. 16 from its proper place on the Assembly File, and to put it down to a lower place than it was entitled to, but that such change was not made.

*Tenth*—The committee think, from the evidence, that all persons who have been in any manner implicated by any testimony taken before them, except as hereinbefore stated, should be fully exonerated.

The committee submit herewith duplicate copies of the testimony taken before them.

The committee also recommend the adoption by the Assembly of the following resolution:

*Resolved*, That Ray Falk be and he is hereby dismissed from his position as Assistant Clerk.

RUSSEL HEATH.  
L. L. EWING.  
J. M. ELLSWORTH.  
W. D. MORRIS.  
JOHN DAVIS.

## TESTIMONY.

### MATTER OF CHARGES AGAINST RAY G. FALK.

SATURDAY, February 19, 1887.

FRANK D. RYAN.

Sworn.

Question—Do you know anything of any change or attempted change of bills on the file? Answer—I do not suppose you refer to the Colusa County bill, Mr. Hart. I do not know any change or attempted change.

FRANK J. BRANDON.

Sworn.

I know nothing of any change on the file. I may have known of attempted changes. I did not see the bill actually changed. The file appeared the next day as it ought to.

Q. Do you know of any leaves having been cut out of this bill? A. I do. When the file was made up, Mr. Smith checked off his file by my notes, and said that there was something wrong; there were several pages wrong. It would change the position of a great many bills on the file. As to who did it, I do not know.

Q. State whether you know of Mr. Falk's having attempted to change the position of any bill on the file. A. I do. I was sitting at the desk. I do not think that any one else was at the desk. I am not certain as to that. I noticed that some one came up to the desk. I did not see who it was at the time. I went on with my writing, still looking to the right without turning my eyes in that direction. The file was being prepared for the printer's file next day. I saw that some one was handling it. I knew that Mr. Smith was the only one that had a right to do it. I saw that some one was doing something with the file. Couldn't exactly see what he was doing, so as to swear positively. The party was Mr. Falk. I did not see him writing on it, nor do I think that he did write on it.

Q. Was he cutting out any part of the file, or pasting it, or changing it in any way? A. He was. I saw that Mr. Falk was at the file; he had a knife in his hand, and was using it as he stood over the file, and had a small piece of paper in his hand. There was a mucilage brush there; I think he had the brush in his hand at some time during the time that he was standing over the file, but will not swear to it positively. I think that I saw him use the brush on a piece of paper when he was standing over the file, but will not swear positively. I did not examine the file for some minutes thereafter. Within a few minutes Mr. Ryan and Mr. Ed. J. Smith came to the desk. I do not think that any one else touched the file from the time that I saw Mr. Falk was there till those gentlemen came. My suspicions were aroused, and I think that I would have noticed if any one else had been there. Mr. Ryan had some talk with Mr.



Falk which I did not understand. Mr. Smith spoke to me about the matter first. The file is at all times in what might be called a mutilated condition. The memoranda of what occurs in the House are hurriedly made on one of the printed bills, and frequently Mr. Smith, to save writing, will cut out a portion of a printed file and paste it on.

Q. Have you had any conversation with Mr. Falk since that time about the matter? A. I have. He said if there was anything in the charge that it would be different. I told him that if I was put on the stand I should tell the truth and nothing else. He said he wanted me to tell the truth. He said that no bill had been raised on the file. I told him that was so.

Q. When you say that no bill was raised in the file, do you mean that the position of the bill on the file was changed at the time Mr. Falk was there, or do you mean that the file as finally completed for the printer was correct? A. I mean that, according to Mr. Smith's statement, the file was correct when it was completed.

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ED. J. SMITH.

Sworn.

I am the clerk that has charge of making up the files for the printer. I have all the files. [Shows the printer's copy of the file prepared in the afternoon of February eighth and February ninth.]

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MR. BRANDON.

Recalled.

And examines the file produced by Mr. Smith, and testifies as follows:

Answer—When I first looked at the file the two minutes after I saw Mr. Falk standing over it with his knife, it was in the same condition so far as Assembly Bill No. 179 is concerned as it was in. Mr. Smith seemed excited, and feared that he would be accused of having made a change, and said that it was not the first time that such a thing had occurred, and at his request I put my initial on the margin so as to be able to identify it. I cannot say whether Mr. Falk was present at this time or not. I am not sure whether I put my initials there immediately or not.

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ED. J. SMITH.

Recalled.

The file before produced by Mr. Smith was shown him, and he testified as follows:

A. This is a part of a file as I had prepared it for February ninth; there are seven bills shown on it. The first six, as I prepared it, were on one whole piece of paper cut from a printed file and pasted on a large sheet. The third bill, counting from the top, is Assembly Bill 179. As the file now appears, the memorandum of that bill is on a separate narrow slip of paper, pasted on the large sheet. The piece of paper that I had pasted on it, containing the memorandum of the six bills, had been cut and a narrow strip taken out, and the same or a similar piece, with the same printed matter on it, pasted on to the large sheet in the place from which the strip had been cut. I do not know who cut the strip out nor who pasted it in. On the eighth of February I was in the lobby; saw Mr. Ryan and Mr. Falk talking together at my desk. Previous to that I had

seen Mr. Falk there. Soon after I went to the desk and saw what had been done to the file. Mr. Ryan and Mr. Brandon were there. Mr. Brandon said to me that there was something wrong about my file; that some one had tried to cut out a bill and change it, and that Frank Ryan came up and stopped it. I think he showed me where an attempt had been made to cut out a bill. I was somewhat excited and do not remember exactly. The next morning I told Mr. Jordan about it, to protect myself. I told him that I had heard that Mr. Falk had done it. I did not know, and do not know now, whether Mr. Falk did it or not. All I know is what I heard. About a week previous to that I discovered that a change had been made in my file. Every other page was wrong. I tore up the whole file and made a new one. I do not know who did it. It made me cautious. I asked Mr. Ryan about the matter of the cutting out of the strip of the file for February ninth, and he said that he asked Falk what he was doing, and that Falk replied that he was not doing anything.

Q. Mr. Smith, do you know whether any offer of money or any thing of value had been made to any clerk of the Assembly to change the files of the House? A. Yes; offers have been made to me. In all cases where all parties asked to have changes made, I have referred the parties to the Chief Clerk, and have refused to change the file without his order. Mr. Ryan would examine the file, and if the change asked was improper, would refuse.

Q. How many times has money been offered to you to make changes in the file? A. Every day during this session nearly; sometimes three or four times a day. It would average about every day.

Q. Was money offered you on the eighth day of February to make any change in the file which was to be made up for the ninth of February? A. No money was offered me on that day, but other considerations were offered me, and promises made me if I would make changes. I would give them taffy and tell them that I would do it, but never did.

Q. How much money was ever offered you to make any change in the files? A. The highest sum offered me this session to make any change was \$200.

Q. Has any member of the Legislature, Senator or Assemblyman, approached you with money during this session to change the place of any bill of the file? A. Yes; members of both the Assembly and the Senate.

Q. During this session of the Legislature do you know whether any bill has been changed on the file? A. No bill has been changed; I could go home with \$1,500 in my pocket if I chose; as it is I am going home without anything.

By MR. ELLSWORTH: You say you were offered \$200 to change the position of a bill? A. I was offered \$200 to leave a bill off the file so that it would never be on the file again. It was an insurance bill. It was the bill that Mr. Mann desired to have pass. It was an Assembly Bill, No. 122. A lawyer wrote me from San Francisco to use his name for \$100 to beat your bill—Bill No. 74. He asked me to do what I could to defeat this bill. He did not specify any particular thing that he wanted done. He made no reference to the file.

Q. Do you think of anything else respecting the attempted change of Bill 179 on the file? If so, please state it. A. A few days before the eighth of February I was approached in regard to this bill, and promised that I would change its place on the file by advancing it. I did not intend to do it, and did not do it. Always when the House adjourns people come to me and want me to do this or that and I give them any kind of an

answer to get rid of them. The next day the party came to me and said: "I see that you did not do as you said you would." I made some excuse. The party watched me so closely that the night of February the seventh I asked Mr. Ryan to go with me to the State Printer's to see me deliver the file without it being changed. He went with me, as did also Mr. Bruck. I went once to Mr. Hart, the author of the bill, and asked him if he would stand by me if I would advance the bill on the file and there should be a row about it. I went to him for the purpose of getting points, not with the intention of doing it if Mr. Hart should answer in the affirmative. Mr. Hart replied to me that he would not stand by me; that he wanted to get the bill through by honorable means, and that he would have nothing to do with such business.

By MR. HEATH: Was any money offered you to advance this bill on the file? A. No money was offered or promises of money were made.

Q. Do you know of money or other valuable consideration being made to other of the clerks during this session to change, alter, or remove any of the bills before the Assembly, in any manner? A. No, sir. I do not think they have been. The system in vogue at the desk is such that I would know if there had been. My position is the only one in which any money can be made, if a man is so disposed.

By MR. ELLSWORTH: You have stated that you were offered \$200 to leave Assembly Bill No. 122 off the file altogether. Who offered you that money? A. The first party was Thomas Agnew. He is connected with the insurance company of which A. J. Bryant is President. The same evening, W. B. Hunt told me that whatever Agnew said he would see that it was carried out. The next morning they picked up a row because I didn't leave this bill off the file. As to Bill No. 179, Mr. Ray Falk told me to advance it as far as I could on the file, and he would see that I was fixed. He afterwards complained that I had not done it.

By MR. HEATH: During this session, has Falk approached you with regard to any other bill, in a similar way? A. He and Jake Shaen asked me to do all I could to get Assembly Bill No. 472 through, and said that there was \$50 in it for me.

By MR. ELLSWORTH: I am not satisfied with regard to Assembly Bill No. 179. A. (By Mr. Smith.) Mr. Ryan and myself were standing in the lobby; we went there for the purpose of watching Falk. I suspected Falk, and asked Ryan to go out in the lobby with me. I thought if Falk was left there it was not unlikely that he would attempt something while Ryan and I were standing in the lobby. Falk was standing by the desk; I saw him take my steel ink-eraser, I saw him cutting on the file with it. I said to Ryan that it was time for him to go up there and see what was being done. He went up to the desk and spoke to Falk, and pointed with his finger and shook his head, and appeared to be angry. Falk turned red; I saw him wet his finger and make a motion as if he were pasting the paper. I then went up to the desk, and Brandon told me that somebody was fooling with my file. I asked him who it was; he said to ask Ryan; that he, Brandon, saw him doing it; that he cocked his eye and saw him, and that he gave Falk hell. I asked Ryan about it, and he said Falk did not accomplish his object. Bill Higgins asked me if I could not destroy that file. He wanted me to get into a carriage and go with him to the Capitol and get the file. That was the evening of the sixteenth or seventeenth of this month. This occurred at Frank Rhoads' saloon, on the corner of Second and J Streets. He asked me not to know anything about the matter, and wanted to know if I had stated anything to any person about it. I told Falk that I had talked with members of the committee

about it, and that Mr. Ellsworth knew that I had it, the file; that I told him so. I had made a business engagement which will probably take me away from Sacramento soon, but intend to stay here until the investigation is over.

MR. RYAN.

Recalled.

I recollect, now, that Mr. Smith called my attention to it; that he said to me that he thought Falk was going to do something with the file. I was standing in the lobby. A moment after I went to the desk I saw that Falk had the file in his hand. I think I asked him what was the matter with the file. He said Mr. Hart was going to make a motion to take the Colusa bill up out of order. I told him that no one except Mr. Smith or myself had any right to touch the file. I think he said he was not trying to change it.

MONDAY EVENING, February 21, 1887.

EDWIN J. SMITH.

Sworn.

MR. ELLSWORTH: There was one thing in your testimony the other night which I do not think I have got quite right. I understood you to say that you and Mr. Ryan went to the lobby together, when you saw Falk at the file. I misunderstood you. You said that Mr. Ryan was standing by the heater there, and I thought you meant the heater at the desk. I understand you did say afterwards that Mr. Ryan was standing by the heater in the lobby. Answer—No, sir. I was standing—at least I was sitting—in Mr. Ewing's seat there, talking to Mr. LaBlanc.

Q. I mean in regard to Mr. Ryan? A. I will tell you how I hunted Mr. Ryan up at the time.

Q. Where was Mr. Ryan standing? A. He was sitting talking to two ladies together, over there where the water is.

Q. Where is that? A. On the right-hand side going out, right abreast of Mr. Campbell's seat.

Q. Was it there that you asked him to go into the lobby? A. Right before these two ladies; yes.

Q. Then I have it right? A. Yes, and he got up and walked out over to the door of the Sergeant-at-Arms' room.

Q. You said something about Mr. Moffitt, which I did not catch, and have not got it down here. Do you remember what your statement was with regard to Mr. Moffitt? A. Yes.

Q. Will you please state that as concise as you can? A. One day, a few weeks ago, Mr. Moffitt came over to the Assembly Chamber, and picked up my file—my daily file, my memorandum file—and took his pencil and made a mark opposite the bill. He says: "I want you to keep that bill down as far as you can, and I will let you know when it is time to go ahead." I says: "All right, I will do it." The next day he came over, and he says to me: "You didn't do as you agreed to do." I says: "No, sir; I did not do it, but I will do it this evening for you." The next morning he did not come over, but he sent a note to me by a Page.

Q. Have you the note with you? A. Yes; here is the note [presenting the note to the Chairman.] The note was marked Exhibit "A."

Q. You can read that note now. A. This note is written on a letter-head of the committee of which Mr. Moffitt is Chairman—City and County and Township Government. The note reads this way: "Dear Ed.: Please don't forget to shove down that bill. You did not do it last evening. Moffitt." The moment I got this note I took it over to Mr. Henry's seat, and I showed it to him.

Q. Mr. Henry of Butte? A. Allen Henry, a member of the Assembly. I says: "Mr. Henry, here is a letter I got from Moffitt." I says: "What do you think of it?" He says: "Don't you attempt to do anything until I see you later." Those are the very words Mr. Henry said to me. I took the note up to the desk, and I showed it. I have got ahead of my story. The day before Mr. Moffitt sent this note to me, Mr. Frank Marston, the Assistant Clerk, was sitting at the desk at the time Mr. Moffitt came in and marked on my file, and I says: "Yes, I will attend to it;" and when Mr. Moffitt went away, Marston says to me: "Ed., I fixed that for you." He did not know what it was at the time he made this remark, but he did it to pump me. He says: "I was in the barber shop, last night, and Moffitt met me there, and asked me who was the best man to attend to the files in regard to bills," and he says that he told Moffitt it was me, and he says: "Whatever you get out of it, you get it through me," and I looked Frank Marston in the face, and I says: "Frank, you do not know what Mr. Moffitt is talking about, and you do not know anything about it." I says: "You are just trying to find out what it is, but you nor nobody else will find it out," and he told me a few days afterwards that he did not know it at the time.

Q. That he did not know it? A. No; he just wanted to find out. He had an idea that we were making money.

Q. Is that your supposition, or do you know it for a fact? A. He made that remark—that I and Frank Brandon were making all the money, and he wasn't making any. He said that two or three times, but whether he said it jokingly or not, I do not know; but when I got this note from Mr. Moffitt, he sent it over by a Page, and about an hour afterwards Mr. Moffitt came over to the Assembly Chamber just as we were about adjourning, and he said: "Smith, I have to make a showing to some people, and I wish you would sit down and write a note, and address it to me, to show that I have been to see you, and that you agreed to do this for me, and you didn't do it;" and I sat down and I wrote a note, saying what I had agreed to do, and was sorry that I could not do it, but said I would hold the amended bill, as soon as it was amended, until he would reply to me. He must have the note in his possession.

Q. Who was that note addressed to? A. That was a letter written at his own request. It was written at his own request.

Q. The bill was not printed, was it? A. Yes; still it held its place on the file. It did not lose its place at all.

Q. Was that actually the case? A. Yes. The next day after that note was written by me there was a young man—I do not know his name, but I see him here in the Capitol every day; he looks a good deal like this man Townsend, Mr. Hearst's Private Secretary—a good deal like him, but he hasn't got the same kind of hair—came to me and asked me to let him look at the amended and engrossed bill—this bill, No. 16. He got the bill out—

Q. Who was that? A. I do not know his name. He is a newspaper man, but I see him here every day. I know him in a minute when I see him. When he was looking at the bill, I asked him what was wrong about it. Well, he says: "I want to see how the amendments—" (another

amendment was added to the bill the preceding day), and he says: "I want to see how this amendment come in;" and after he saw it he went off satisfied; and as he was starting off he says to me: "You wrote a note to Mr. Moffitt, agreeing to do something for him, and apologizing for not doing it." I says, "Yes." That man can corroborate me if he is subpoenaed before the committee. I saw Mr. Moffitt most every day since then.

Q. Can you describe that man? A. He looked a good deal like Mr. Hearst's Private Secretary. You see him there in the Assembly Chamber, at the lower end.

Q. You remember it, and give us the name of that young man. A. I will. Mr. Moffitt has seen me most every day since then, and every time he sees me he says: "Old smoothy, you not only lost something, but I lost something." Last evening I was sitting on the railing between the lobby and the Assembly Chamber, with a young man by the name of Albert Bruck. He is a clerk of the Committee on Viticulture and Vini-culture of the Assembly. He and I generally ate supper together every evening, and I was waiting for him to get ready to go down to supper. Well, I was sitting there waiting for the messenger to come and take the file to the printing office. That was the reason I was waiting there, and Moffitt came along with some man. I think his name is Henry Schwartz. I am not positive about that, and he said in a very loud tone of voice, that could be heard half way up to the Speaker's desk, "Ed., you not only beat yourself out of \$75, but you beat me out of \$100 or \$200."

Q. Was anybody else sitting near, within hearing, at that time? A. Well, I did not pay any attention to only this young fellow with me. We were sitting as close as we are here.

Q. What time of day was it? A. It was in the evening, about seven o'clock.

Q. The House was not in session? A. No, sir. I do not think there was an evening session that night. I was waiting for the messenger from the printing office to come up and take my papers down stairs.

Q. Have you any idea that any one else was within hearing when Mr. Moffitt made that remark to you? A. Only this party that was with him.

Q. The party that was with him? A. Yes. I think it was Henry Schwartz, but I am not positive. I cannot say.

Q. Have you any idea that there was any one else in the Assembly Chamber at all? A. Yes, I guess so; there were quite a number there. I know that Frank Brandon was up at the desk. I do not know but what you might have been there, but I did not pay any attention to it.

Q. Had Mr. Moffitt at any time, or has he at any time, offered you any money or in consideration of any means of value to keep that bill down on the file, or to keep it out of its proper place? A. No, sir; he said I would get something in it. As soon as he got these people to come, he would attend to me after that.

Q. When did he say that to you? A. He said it when he first asked me to put the bill down on the file.

Q. Has he ever made you any offer or promise of that kind subsequently? A. No, only every time he would meet me; different times he would come over to the Assembly Chamber, or meet me down town, and would kind of chastise me, or talk to me for not doing it. He says, "You will not only lose yourself, but you will make me lose something." He says, "The sooner you do it, the sooner the money will come up." Those are the words he used.

Q. Did you do it? A. No, sir; I did not do it.

Q. Did you ever change the bill at all from its proper place on file? A.

No, sir; there is not a bill that I ever changed on file. I was going to ask the committee to take the files and go through and check them off, and see for themselves. There has not a bill been changed on that file during the whole session.

Q. Do you know Mr. Moffitt's handwriting? A. I am positive that is Moffitt's handwriting. Yes.

Q. You spoke of a mark which he made opposite that bill on file? A. Yes.

Q. What mark did he make? A. A cross mark right on the margin opposite the bill.

Q. When was that? A. I think that was a couple of days before the bill was amended exempting wholesale dealers.

Q. That is the opium bill? A. No. 16. Yes.

Q. Are you sure that is the number? A. Yes.

Q. An Assembly bill? A. An Assembly bill. It is on the Assembly File now.

Q. Was there anything else transpired between you and Mr. Moffitt with reference to that bill? A. No, sir. Only what I have told you.

Q. Now, you have mentioned Mr. Henry's name? A. Yes.

Q. You spoke of taking this note that you had received from Mr. Moffitt to Mr. Henry? A. Yes; I went down to Mr. Henry's desk—Mr. Allen Henry.

Q. You showed him that note, did you? A. Yes.

Q. What was it Henry said to you when you showed him the note? A. He read the note. He admitted Saturday night he read the note. He read the note, and I asked him what he thought about it. He says, "Don't you attempt to do anything with that bill until I tell you." He says, "They have got to come and fix me first before you can do anything." You can see the note is crumpled up—I rumbled the note up and put it in my pocket.

Q. Do you know whether he had an interview with Mr. Moffitt respecting that, of your own knowledge? A. I do not think he had that night.

Q. Do you know of your own knowledge? A. No, sir; only what I am going to tell you. I had an interview a night or two afterwards with Mr. Henry, and he asked me, of his own motion, how I was getting along with the opium bill? "Well," I said, "it is just as it was before. I see you have been passing it on file." Mr. Henry had been passing it on file every day.

Q. You mean it had been passed on file at Mr. Henry's request? A. At his request it had been passed on file. He says, "Those fellows haven't come up yet;" and he says, "Before I go ahead they have got to come up and fix me." That is all the talk we had.

Q. Did he say anything further about it? A. No, sir.

Q. Did he say who was to fix him? A. No, sir. That is all the talk I had with him.

Q. Have you seen an article in the "Chronicle" this morning? A. Yes, I read that.

Q. The statement there is, "They can go to —; they must come up with \$500 before they can do anything." A. He never said that to me at all. All he said was, "They had to come up and fix him before they went on."

Q. Do you recollect the date of that conversation at the Golden Eagle? Was it at the Golden Eagle Hotel? A. Yes, it was at the Golden Eagle Hotel.

Q. Do you recollect the date of that conversation? A. I think it was last Monday evening.

Q. Last Monday evening? A. Yes, I think it was.

Q. Was it since this note? A. Yes; I have had that note for a couple of weeks. It was since that note.

Q. That was Monday evening, the fourteenth? A. I would not be positive about the date, but I think that was the date.

Q. Have you any means, Mr. Smith, by which you can fix the date? A. I will tell you what I think it is. I think it was the night of the day that Colonel Cooley got leave of absence for his Military Committee to go to Los Angeles.

Q. What makes you think it was that day? A. The reason I think it was that day, I was going into the —, and he met me in the saloon, going there; and he called me off to one side, and he asked me if I was a friend of Sconchin Maloney; and we had some talk about it, and it seems to me that he and Colonel Cooley had some words coming up on the train the preceding week, and he was hanging around there waiting for Sconchin he come in, and I think Henry came in that night.

Q. Are you positive of the day, when you had this talk with Cooley about Sconchin? A. That is what I think it was, that night.

Q. The night of the day on which he got leave of absence to go to Los Angeles? A. Yes. The Journal will show what day it was.

Q. You are not positive? A. No; but I think it was that night. I am kind of positive, but I would not want to say that for a fact.

Q. Can you tell the day that you received that note from Mr. Moffitt? It is not dated. A. I can tell the day that I received the note from Mr. Moffitt. The day I received that note from Mr. Moffitt was the day when they had to stop proceedings in the Assembly for about two minutes in order to know if a bill was printed. A couple of ladies were out in the room and wanted to see me, and I went out to bring them in, and they had to wait for me to come in to see if the bill was printed. It was about three o'clock in the afternoon, and it is within the last three weeks.

Q. That you received the note? A. Yes.

Q. Was the bill amended? The bill has been amended, has it not, since it was introduced? A. It has been amended; yes.

Q. Was the bill amended before or after you received that note from Mr. Moffitt? A. Just about the same time.

Q. About the time you received that note from Mr. Moffitt? A. Yes. The reason I know it was amended was that he came over, and the next conversation he had with me, and he looked at the bill, and he says, "Well, I am satisfied with the bill as amended. It will suit me whether it goes through or not." So it was amended at the time.

Q. You say it was amended at the time, or was it after? A. The next time I saw him after I got that note it was amended.

Q. The first time you saw him after the receipt of that note it had been amended? A. Yes.

Q. Had it been amended at the time you received the note? A. That I cannot say. I do not know.

Q. You know whether it had been amended within three or four days after that? A. Well, I saw Moffitt within a day after I got that note.

Q. You think it was amended within twenty-four hours after that note was received? A. Yes. It might have been amended when I got the note.

Q. You say after you got the note he was satisfied with the bill as

amended? A. Yes. He did not care whether it went through or not. If it did not go through it was just as good to him as if it did go through.

Q. Did you ever have any talk with Mr. Henry about the amendments to the bill? A. No, sir. I never talked with Mr. Henry about the amendments to the bill at all. All the talk I had with Mr. Henry is what I say now about that particular bill.

Q. And that conversation was after the bill was amended, was it? A. Yes.

Q. Was that bill amended in the Assembly? A. Yes. It isn't on the Senate File yet. It has been the first bill on the General File every day. You might notice it.

Q. Then it was a week or ten days at least after the bill was amended that you had that conversation with Mr. Henry at the Golden Eagle? A. About that time, yes.

Q. At least a week or ten days? A. Yes, about that time.

Q. Have you had a conversation with Henry since that time about it? A. Not about the bill, no. I had conversations with him about business, and about talking to you folks, but not to amount to anything like that.

Q. What do you mean by "about talking to us folks?" A. Well, he would go to them and ask them what was the trouble with the bill, that it had come in wrong.

Q. You mean about the business of the House, generally? A. Yes, about our general business.

Q. Mr. Henry said nothing about the amendments in any conversation? A. No, sir; not at all.

Q. Did Mr. Moffitt ever ask you to change the position of any other bill on file? A. No, sir; that is the only bill.

Q. Did Mr. Henry ever ask you to change the position of any bill on the file? A. No, sir; he never did.

Q. Or offer you any money for it? A. No, sir; Mr. Henry never said anything that way at all to me.

Q. Did Mr. Henry ever intimate to you in a conversation that his object was, or that he desired to catch these people who were trying to defeat his bill? A. Well, my own inference was that Mr. Henry wanted to be in the same boat with Mr. Moffitt; he wanted to get something. It looked that way to me. He says, "You fellows can't do nothing until I am fixed with those fellows, too." That is just what he said.

Q. Did he speak as though he was serious about it, or in a jocose manner? A. I do not know; we were talking between ourselves.

Q. I asked you whether Mr. Henry appeared from his manner to be serious about what he said, or whether he appeared to be saying it in a jocose manner? A. Well, I never talked with Mr. Henry at all. It has always been business that I was talking to him about. I would think from the way he spoke that he was in earnest about it, although he might not have been. I know he said it that way. He shook his head and says: "No, you don't do nothing until they fix me." "Moffitt ain't going to make it all," he says—something like that, I know.

THE CHAIRMAN: Mr. Smith, you stated the other night that you had notes in your possession in regard to this business? A. Yes.

Q. Will you produce them? A. I have got no more about this than I have about other matters.

MR. ELLSWORTH: Mr. Smith, you know there is a bill pending in the Assembly with reference to what is known as the Aurelia Pfeiffer claim? A. Yes, Bill 295—An Act to provide for the payment to Miss Aurelia Pfeiffer for water appropriated from her land by the State University at Berkeley — \$17,000. It is Assembly Bill 295, introduced by Mr. LaBlanc.

Q. Do you know L. E. Bulkeley? A. Yes, he has talked frequently about it.

Q. Has he ever said anything to you about changing the position of that bill on the file? A. Yes; he begged and begged of me to do it.

Q. What did he beg you to do? A. To advance it on the file as much as I possibly could.

Q. Orally or in writing? A. Both orally and in writing, and he has jawed me because I didn't do it, and threatened to lick me for promising to do it, and then not doing as I would promise.

Q. Have you promised him that you would do it? A. I have promised him several times, just to get rid of him, in the Assembly Chamber. He has come right up to the desk and asked me, and I would say: "O, for God's sake; I will do it." I used to get mad at him. He used to request members to ask Ed. Smith to come out, that a gentleman wanted to see him. He knew I would not come, unless somebody would ask me to come.

Q. You say you promised him that to get rid of him? A. Yes.

Q. Did you intend, when you promised that, to do anything of the kind? A. No, sir.

Q. Did you ever do anything of the kind—that is, to change that bill? A. No, sir; I did not intend to do it.

Q. Did he make you any offers, or offer to give you anything, if you advanced the bill on file? A. Yes.

Q. What has he given you? A. He has given me some money already, but not on that account. I will tell you the connection in which he gave it to me. Not on that account. Well, it might be construed to be on that account, and still not be.

Q. Well, state the facts. A. I first became acquainted with him in San Francisco. I met him frequently, and I used to know him when I was a boy, working in a law office. He came to me one day, and he wanted me to send down to him a printed copy of every bill that was introduced in the Legislature. He wanted a printed copy sent down to him twice a week by mail, and I says, "Well, it is pretty expensive, and you will have to leave me some money to pay postage and such things as that in sending the copies down." "Well," he says, "you have got the privilege of sending these for nothing, have you not?" I says, "No; we are not the United States Government;" we have to pay for everything that we send from here." "Well," he says, "you send them down by Wells, Fargo & Co., to collect, and I will pay for them myself, down there. In the meantime, you get me up all the bills you can." There were some one hundred and sixty bills introduced at that time. His bill had not been introduced yet. After I had got one of the Pages to get those bills for him, he asked me if I would not ask one of the newspaper men to publish his name in the papers as being attorney up here on legislative business, and he went down to the city, and came back about three or four days after that, and he called me out in the Sergeant-at-Arms' room, and he said, "I am going down to the city this afternoon, and my bill was introduced to-day," and he says, "You have got these things for me, and you send these others down, and then I will write to you back in reply, and here is \$5 to pay your expenses." And he gave me \$5, and I took it. He says, "That will pay for oysters for you," and I concluded that I had earned \$5 for putting myself out of the way in getting all these things for him, and I took the \$5. A few days after that he was up here, and he commenced then talking about this bill of his, this Bill 295. He says, the committee

are going to report back in the morning, favorably, and he wanted me to put it on file, as far up as I could. The bill did not come back the next morning.

Q. Did not come back? A. No, sir. I did not know what the bill was, and I asked him what bill it was, and he says, "My God, didn't you put that bill up on the file?" I says, "No." In the first place I did not see the bill; in the next place, I did not know whether it was on the file at that time or not. He went to Mr. Young, the Chairman of the Committee on Claims, and found out that it had not been reported, but would be the next day, and it was reported. The bill was on file in its regular order. After it was reported back, he said he was going down to San Francisco, and he told me that when he came back from Frisco—five or six sheets five or six pages—he would give me \$50, and when it was read the first time, advanced to the second reading, he would give me \$50 more. He said also "That will be the easiest one hundred dollars you ever made in your life, because the money will be paid to you the moment it is done."

Q. Have you any written communications from him on the subject? A. Yes, I have.

Q. Please produce them. A. The first one is this one. [Producing the letter, marked Exhibit "B."]

Q. Mr. Smith, read this exhibit in evidence. "Palace Hotel, Friday evening. Ed. J. Smith—My dear sir: I don't find Bill 295 among those passed to first reading. Please don't neglect this. Will go up Sunday, 3 o'clock train. Meet me at Golden Eagle. L. E. Bulkeley."

This is the second note I received, marked Exhibit "C."

Q. Mr. Smith, read exhibit "C." "February 9, 1887. Palace Hotel, San Francisco. Ed. J. Smith—Dear sir: Don't fail to get Bill 295, to pay estate of Aurelia Pfeiffer, etc., on the file, so it can be called up for first reading before Saturday. Inform Mr. LaBlanc, so that he can call it up, or he might be absent from the House. Please attend to this, as I may not be able to go up before Sunday. Yours, truly, L. E. Bulkeley." Then there is a postscript to the letter: "Mail me a copy of the amended bill as soon as it is printed." There is the next note that I received. That is the last one—marked exhibit "D." "Palace Hotel, San Francisco, February 12, 1887. My dear Ned: I find it will be much to the interest of Bill 295 for me to remain over till Monday morning. Please inform Mr. LaBlanc. Drive that business and I will see you as soon as I arrive. Don't spare anything. Bulkeley." "Drive that business" and "don't spare anything" he has got heavily underlined.

Q. Are those the only written communications you received from Mr. Bulkeley in reference to that bill, Mr. Smith? A. The only ones that I have kept. I have received small notes brought in by Pages that I have thrown away and never kept—a little memorandum that he would write in the lobby. I never kept them.

Q. Do you recollect the contents of any of them? A. Well, I recollect the contents were that he wanted the file to be changed. He would say, "Don't forget to do it to-night, and next morning lay it on the printer." I used to lay it on the printer always with him.

Q. What do you mean? A. Well, I used to say the printer would see the number—you know the center of the file would be very seldom touched; you know there would be a great many pages that would be the same, that there would be no bills taken off from at all—and I used to say, "The printer would see the pages out of place, and would put the pages back in their proper places." And he used to say, "Now, next morning when I get up I will put my file in my pocket and compare it with the

file in the morning, and if I find you didn't put this up on the file I don't want you to say that the printer did it. I don't want to trust you any more." And he kept bothering me so much that I finally told him to quit; that I did not want anything more to do with him. I would like to state in connection with this matter: since last Saturday night there was a gentleman came to the middle gate of the Assembly Chamber and sent a Page up for me. I looked up, and I looked up and I saw it was another man in the lobby wanted to see me—motioned to see me, and motioned for me to come out. They were reading bills and I was busy, and I did not like to leave my file, so I waited until they got on to some long bill, and then I went out there where he was, and we came up stairs, and half way up the steps going up stairs, on the first platform, he says, "Smithy," he says, "what are you going to do to-night before that committee?" I says, "What do you mean?"

Q. That was when? A. This afternoon, about three or four o'clock. Well, he says: "About this Bulkeley matter. He is pretty worried about it, and he says he wants to know if you cannot stop it." I says, "There is never a thing in the world will stop me now." I says: "They have bulldozed me; and he is the man that has threatened my life—threatened to kill me—and he has gone so far, I am going right on ahead, and I cannot tell any more than I have told Saturday night about him." "Well," he says, "you have got some letters that you got from him." I says, "Yes." He says: "You better give those letters." I says: "What do you take me for?" "Well," he says, "there is something in it for me if I can get those letters." He says: "You can say very easy to the committee that you lost them." I says: "No, sir; I told one of the members of the committee yesterday that I wanted him to keep the letters, and he says it will be better for me to keep them, for fear if he lost them they would think there was something wrong," and I left him. I wanted to go back; I did not care to have any talk with him at all. I went back to my desk, and when we adjourned this, he was waiting there for me. I saw him waiting, and I tried to dodge him, and tried to get out of his way, and when I came up, he met me and walked with me down as far as the corner of Eighth and K, Chenoweth's saloon, and the conversation all the way down was about these letters. He wanted to know if I could not avoid answering any questions about those letters of Bulkeley. I told him I could not. "Well," he says, "isn't there anything in the world can stop you from doing?" I says, "No, sir; nothing."

THE CHAIRMAN: Which is this man that you are talking about now? A. That man is an ex-Senator—T. K. Nelson. He is a lobby man up here now.

MR. ELLSWORTH: Where does he reside? A. He is from San Francisco.

THE CHAIRMAN: An ex-Senator from San Francisco? A. He has been a Senator. He was a member of the Constitutional Convention, and Senator in 1880, 1881, and 1883. He wanted those letters very bad, and said Mr. Bulkeley was very much worried about them.

MR. ELLSWORTH: You say Mr. Bulkeley has threatened to kill you? A. There has been word brought to me for me to be very careful of Bulkeley; that he is laying for me, and that I won't leave Sacramento alive if he ever gets hold of me.

Q. Did he ever personally make any threats to you? A. I have not spoken to Mr. Bulkeley since last Friday evening, excepting last Sunday evening at the Golden Eagle Hotel; he demanded those letters from me in the presence of this man, who was in here just now—McCausland.



Q. You say at the Golden Eagle Hotel last Sunday evening, in the presence of Mr. McCausland, he demanded of you the letters? A. Yes. He and Mr. McCausland came out of one door and I passed them and got about ten feet from Bulkeley, when he called me back, and he says, "Smith, have you got those letters?" I says, "Yes." He says, "I want you to give them to me." I says, "They are in a safe place now—safer than they are in your hands."

Q. Did McCausland hear that? A. He was right there with him, within about ten feet. I intended to ask McCausland if he heard him. But he heard him, of course; because McCausland is a newspaper man, and he can hear everything.

Q. Is that all you know about this, or any attempts to advance Bill 295 on the file? A. Yes.

Q. Is that all you know about attempts to advance that one bill, or about getting that bill advanced? A. Yes, that is all I know about that bill.

Q. You stated, I think the other night, about some State officer having offered you \$1,000 to change the word "and" to "or." A. That was not this session. That was the session of 1881, I think; yes, I guess it was last session—yes, it was last session—that is so.

Q. What bill was that? A. It was in the General Appropriation Bill. I could not now tell what section it was, or where it happened, unless I could see the original bill in the Secretary of State's office. I could tell from that; but I could not tell now from my memory.

Q. If you could see the original bill, you could tell, could you? A. Yes.

Q. Was Mr. Sparks the Speaker in 1881, too? A. Yes; I think it was the 1881 session; I do not think it was the last session.

Q. How could you tell, if you would see the bill, which was the bill? A. Well, because I checked the amendments in that bill myself; I checked them all. I am positive it was in 1881 session now, because it was in the Senate. I was Assistant Secretary of the Senate. He was a State Senator at that time, and he is an appointed State officer now.

Q. Did you make the change? A. No, sir; not much. I could tell now if I would see those appropriation bills of those two sessions.

Q. The general appropriation? A. The General Appropriation Bill; yes.

Q. It materially changed the intention of the appropriation? A. It would have changed it; yes.

Q. Was the change made by anybody? A. No, sir; it was not, because I think I made the remark to the Secretary of the Commission for which the money was to be expended by the appropriation they were to have, after we had adjourned and went home.

Q. What remark? A. I did not tell them all the circumstances, but I said there was an attempt made to change the reading of his item of appropriation—the item in the bill relating to his appropriation.

Q. The appropriation for his commission? A. Yes; and he looked at it, and he says that would affect them very seriously; they would have been out some money.

Q. What commission was it? A. Well, I would not like to answer that question, Mr. Ellsworth, until to-morrow, because I think that the party is going to be up here to-morrow, and I would not like to testify to that now.

Q. I asked you the question who the man was that asked you to make the change. I asked you what commission this appropriation was for the benefit of? A. Well, it was in connection with the expenditure of some money, either by the Viticulture Commission—it is a State commission—or by a commission for the State University in the experimenting of wines;

but which one it was, I could not tell you, but I could tell from the bill, if I got hold of the bill.

Q. You say it was for an expenditure for the Viticulture Commission? A. That is what I think.

Q. Or for some branch of the University that is connected, or has something to do with viticultural matters? A. Yes, it is either that or in connection with the Labor Commission.

Q. The Labor Commission? A. Yes; Enos' office. Enos is Labor Commissioner now under Governor Stoneman, and if I see this Secretary that I spoke to, I can tell from a conversation with him in a minute which it is.

Q. You do not know for a certainty which commission it is? A. No; I have not paid any attention to it since. If I would go in the Secretary of State's office to-morrow and examine those records of that session I could find out very easily.

Q. Who was the man that asked you to make that change? A. I would not like to tell that, Mr. Ellsworth.

Q. I do not suppose you do wish to tell it, Mr. Smith, but it is a matter which I think it is your duty to tell? A. I told the name of the party the other night, and it has caused me a great deal of hard feeling now. I saw a letter written to one of the members of the present Legislature, in which he not only feels hard against me, but he contradicts what I said Saturday night, and I would not like to get into any controversy with those fellows.

Q. It cannot be helped, Mr. Smith. You have told now so nearly who it was that in justice to other parties you ought to give the name? A. There was no change made.

Q. I understand that there wasn't any change made; but you have stated that a certain State officer who was appointed to an office, and whose term will soon expire, requested you to make that change. Now, in justice to other men, who hold appointed offices, the name ought to be given, if for no other reason, so that the suspicion should not rest on half a dozen men, when there is only one of them guilty? A. Well, now, you pass that over again until to-morrow, Mr. Ellsworth.

Q. I think not. A. I would not like to answer it this evening.

THE CHAIRMAN: Mr. Smith, I think it your duty to give the committee that man's name? A. I would like, as a favor, that you would wait until to-morrow.

MR. ELLSWORTH: We will pass it for the present until later in the evening. A. Because I will tell you what I did, Mr. Heath, with all due respect to the committee: I expected this matter was going to be brought out anyhow; I looked for it, and I consulted to-day with an attorney and wanted to know what my rights would be in the matter, and he said he would give me an opinion in the morning.

Q. About what, do you mean? A. In regard to giving this name, and I would like to wait until I hear from him.

Q. You stated that you had been approached by members of the Senate and House both with offers of valuable consideration to change the position of bills on the file? How many members of the Assembly have approached you in that manner with those offers? A. There was one Senator.

Q. I mean members of the Assembly who have approached you in that manner? A. There has been no member outside of what I have mentioned that offered me any money. There have been members come up and requested me, and asked me to put their bills upon the file as far as I could, and the next morning they used to complain to me that I did not

keep my word, and that I did not do it; but there were no offers of money made from them at all.

Q. No offers of any valuable consideration of any sort? A. As a favor, they used to ask me to do it.

Q. Has any Assemblyman—member of the present Assembly—offered you any valuable consideration of any kind, in money or other thing of value, or made you any promise of any sort, on condition of your advancing a bill or bills on file, or putting them down, or changing their position in any way on the file? A. No, sir; not at all. No offers have been made, nor no promises have been made from any of them in that way.

Q. That is, members of the Assembly? A. Yes, members of the Assembly.

Q. Have any members of the Senate made you any offers of money—any members of the Senate other than Mr. Moffitt—already made you any promise, or held out any hope of reward of any kind, in consideration of your changing the position of any bill on file in the Senate? A. No, sir. There has been no direct talk about any of them. There was one case I had, but the bill was a very small bill that appropriated only \$67 to pay a deficiency bill to the Bailiff of the Railroad Commissioners—the first Railroad Commissioners of the State, and I drew the bill up for that Senator, and he says: "Now, when that bill comes over into the House, you do all you can to help it through." He says, "It is only a small amount, but," he says, "I promised a man that I would get it through for him." He says, "If I don't get it through for him, I will have to pay it out of my own pocket." And he says, "I want you to do the best you can to get it through, and I will see that you will be paid for your services." And he did not say anything about advancing it on the file, at all; just to do what I could to get it through. I believe the bill is on the file now.

Q. Was that the bill that was introduced first in the Senate? A. It has never been in the Assembly; it is over in the Senate.

Q. It has not, in the Assembly? A. No, sir; I do not think it was ever introduced in the Assembly. It might have been.

Q. His request to you was, that when it came in the Assembly to do all you can to have it passed? A. To do all I can to have it passed. "Don't leave it sleep, but keep it moving all the time." And I told him I would. But he did not say anything about the file, or anything like that.

Q. He did not attempt that?

THE CHAIRMAN: Mr. Smith, I want to ask you in regard to that pilot bill. A. Yes.

Q. I want to call your attention particularly to that bill now. Will you tell us if anything was ever said to you, or any offers ever made to you, with regard to that pilot bill? A. Well, there have been a great many people asked me about that bill, both in the lobby and shipping men—they have been after me. They never made any promises, but they said there would be something in it, and if I would stand in and do what I ought to do with the file that I could get something out of it. But that come from so many fellows that I could not tell, Mr. Heath, who was the man that made the promises. There were so many men bothering me about that. They used to bother me every day.

Q. You stated the other night that offers had been made to you with regard to that Colusa County bill. Will you repeat what you stated the other night, and state any offers that were made to you with regard to it? A. Well, the bill was first reported back by the committee—Senate Bill 179—An Act entitled "An Act to create the County of Glenn, to establish boundaries thereof, and to provide for its organization." Ray Falk,

the Assistant Minute Clerk, came to me and marked the location of the bill on my file, and he asked me to put the bill on the file as far as I could. He even took the sheets and lifted them up, and showed me where he would like to have it go in that day for the next day's file. He put it up about three pages that day, and after he went away from my seat I replaced the sheets back where they belonged, finished up my file that evening, and when we adjourned I took it down to the printer's office. The next morning he came to me, and he says, "Smith," he says, "you didn't leave that bill there where it was." I says, "No, I didn't do it." I says, "Frank Ryan is the man to do that business about the file—to order the file changed—and I won't do it on my own responsibility." And he says, "Frank Ryan don't care anything about it, and he need not know it." And he says, "We might as well make something out of it as to let them make it." He says, "I told those fellows last night that it had been done, and here on the file, as shown this morning, it is in the same position." He says, "Now, do it to-night," he says, "and we will get something ourselves." "Well," I says, "I will see about it." That evening he wanted me to do it again, and I told him I would do it. The next morning it was not done, and he was very much agitated about it, very nervous, and I saw him go out and talk to the men at the side gate, going out into the Sergeant-at-Arms' room, and they were throwing their hands out as though they were excited, cross about it, or mad about something; because it had not been done, I suppose, was the trouble, and he came back and says: "Smith," he says, "what is the matter with you this session; you ain't letting the boys make anything at all." He says, "You might as well get in and make it as well as these fellows on the outside."

Q. That was in connection with the Colusa County bill? A. Yes.

THE CHAIRMAN: Mr. Smith, did Ray Falk ever approach you with regard to that Colusa County bill, other than the time you state now? A. No, sir.

Q. With regard to advancing it on the file? A. No, sir; it was about two or three times he did it. That is, about how he did it anyhow.

Q. He did it two or three times in this manner? A. Yes. That time when he came, I told him, "When you want to get any bill fixed, or changed, or altered on the file, other than the way that I have it, you will have to see the Chief Clerk;" that I was not going to attempt to do anything to the file. And I used to always report to Mr. Ryan, the Chief Clerk, when any of those things happened; I would tell him that such a man wants that bill advanced.

Q. Did any other person approach you with offers to change that Colusa County bill? A. No, sir. They call it the Glenn County bill.

Q. Do you recollect the number of the bill? A. No. 179. Then the next thing I heard about it was the time of the cutting. That was the next day.

Q. You have already described that in your evidence? A. Yes.

Q. I see in the "Chronicle," Mr. Smith, here, the statement that Mr. Henry said to you, "They can go to —; they must come up with \$500 before they can do anything." Did you say anything of that kind? A. No, I did not testify to anything of that kind.

Q. Did you state that to the "Chronicle" reporter? A. No, sir.

Q. You did not mention any sum? A. No, sir; no more than what I have stated to-night about what I stated to him.

Q. You did not mention any sum? A. No, sir.

MR. ELLSWORTH: In regard to the pilot bill—did you ever have any conversation with Assemblyman Brooks about that pilot bill? A. No; the only conversation I ever had with Mr. Brooks about the pilot bill was—

I have got a little bill on the file for myself, to pay for some services rendered the State since the last session of the Legislature under a resolution of the Senate, and it is on the file of the Assembly, and it has been on file quite awhile, and one day I went to Mr. Brooks, and asked him when he called up bills out of order, if he would call this bill up for me; but he would have to call up three to call up mine, because there were three of them alike; there were three other claims besides mine; three of us worked in the same office. And he says to me—I don't know whether he said to me in a joking way or not—he says, "What is there in it, if I call it up?" I says, "O, it is a little matter, and there is no need of talking that way." "O," he says, "I did not mean anything by that, Smith, but," he says, "you fellows up at the desk are making it all in the pilot bill." He says, "You fellows are making it all, and us fellows ain't making anything at all." That is all he said. He says, "You boys are making it all, and I ain't making anything out of it at all." Whether he said it in a joke or not, I could not say. This man, Nelson and Higgins—those men in the lobby—were talking to me, but they never said anything to me about any money that way, nor Mr. Brooks either, but that was the way he made the expression. I thought it was really a joke, because he was talking about my own bill, and then he brought this language up afterwards. I heard a good deal about that, but I do not know anything positively.

Q. I see this statement in the "Chronicle" of to-day with reference to Mr. Brooks: "He asked to have his pilot bill held back, saying that 'they had not yet come up,' and that 'the boys had not yet received their fee.'" Did you say anything of that kind to the reporter of the "Chronicle?" A. No, I did not; but I will tell you what that refers to.

Q. Did you make any statement of that kind with reference to Mr. Brooks to any person? A. No, sir. I may have, but I do not think I did; but I know what that conversation was, though.

Q. Well, did any such conversation take place between you and Mr. Brooks; did he say anything of that kind to you? A. No, sir; he did not say that at all.

Q. What does it refer to? A. One day, you remember, Mr. Hyde offered a great many amendments to the pilot bill—some were accepted and some were rejected—and the Chief Clerk would forget sometimes about his initials. If they were adopted, he would put his initials, "F. D.," on.

Q. On the amendment? A. Yes; that would guide me in making my amended copy for the printer. And, if I would find no initials on the amendment, I would go to Frank and ask him, and sometimes he would forget whether they were rejected or whether they were adopted, and he would compare them and see if the amendments were either in Mr. Brooks' or in Mr. Hyde's writing—they were the two offering the amendments—and would go to either of them and ask them their opinion, and then he would go to the Minute Clerk and see how the Minute Clerk had them, and one day Mr. Brooks made the remark, when I was making an amended copy for the printer, he says: "You needn't be in such a hell of a big hurry to get that bill to the printer; keep it for a few days, there is plenty of time." That is all he said. He never said nothing about a fee. He said I needn't be in a hurry about that.

Q. To keep it there for a few days? A. Yes.

Q. Was that said in earnest or in jest? A. Oh, he was in earnest about that. I says: "I am going to send it to the printer just as soon as I can get those amendments copied." It took me half an hour or so to get them down.

Q. What reply did he make to that? A. He didn't say anything. It was at his desk. Mr. Brooks made that remark loud enough for Mr. Heath to hear.

MR. HEATH (the Chairman): I never pay any attention to what is going on around my desk unless it is addressed directly to me. He spoke as though he did not want that bill to go in at that time.

MR. ELLSWORTH: To go to the printer? A. Yes; the amended copy.

Q. Did he ever ask you either to advance that bill on the file, or to take it and put it back on the file, or to change its place in any way on the file? A. No, sir; that is all he ever asked me to do about the bill, when he made that remark about my being in a hurry.

Q. Did any person ever make you any offer of money, or of anything of value, or any promise of any kind, with reference to your action upon that bill? A. No, sir; no money was offered me at all; nothing was said about money at all.

Q. Well, any promise of any kind? A. No, sir; no promise at all.

Q. No inducements offered you to do anything to the bill? A. No, sir; no person ever spoke to me about money in reference to that bill—that is, to give me any money—but a man told me there was lots of money in that bill. And in a general conversation to the general subjects, he says: "There is one bill—an old-timer, a cinch bill, that is up—introduced by Mr. Brooks, where there is going to be lots of money in."

THE CHAIRMAN: Mr. Smith, I want to ask you with regard to that Telegraph Hill bill. Was any proposition ever made to you with regard to that Telegraph Hill bill? A. No; there was no proposition made to me at all.

Q. Do you know of any offer being made to any one with regard to that Telegraph Hill bill? A. No, sir; I cannot say that I do. The only thing that I heard about the Telegraph Hill bill, personally, myself, was one day somebody—I do not know who it was, whether it was a member or an outsider—came to me to look at the substitute which was offered, and I got out the original bill. The substitute, you know, is not printed until the second reading, and this party wanted to get a copy of the substitute. This man was an outsider; I am sure now. And I went to work, and I says, "Now, if you want to get a good many copies of that substitute, you go down and get the member that introduced it—I think Mr. Callaghan introduced it—I says, "You get the member that introduced it to get up and make a motion that a substitute be printed out of order. And a motion was made, and I took it to the printer to have it printed, and this party that came to look at the bill asked me if I would not ask the printer if he would not hurry up and print it, and get it down in the morning, or get it there about three o'clock in the morning. And I went to Callaghan, and I asked Callaghan who it was that wanted the bill printed out of order—the substitute—and he said he wanted to take some to 'Frisco himself, to people, and the boys in the lobby. And so, either the next day, or the day afterwards, this party said, "Just as soon as the bill goes through," forgetting we printed out of order, that "for any little services you can render like that to the bill, you will be paid for it as soon as they collect their money." So I inferred that whatever I did for them, they would pay me from their claim as soon as they got it. But there was no money in doing it; nothing talked about file business, nor nothing like that.

MR. ELLSWORTH: Has any money been offered you with reference to any of the charter bills? A. No, sir.

Q. That have been in the Assembly? A. No, sir. I put myself out of the way for a charter bill, too, one night. I waited at the printing office

until two o'clock Sunday morning to get some charters, and I got a bundle, and I think I offered you some. Mr. Hyde asked me, as a favor—he introduced it out of order one day—and he asked me, as a special favor, as he was going to Oakland, if I could not send him down some, and in order to do so I waited there till two o'clock Sunday morning to get them, to send them down by express that Sunday morning, but nobody ever told me anything about any money.

Q. Have you any letters or notes from any members of the Senate or Assembly with reference to bills pending before the Assembly, except what you have shown here this evening—except the one from Mr. Moffitt? You have no other? A. Generally, these kind of notes that are received from any members would be on little slips of paper, and I have thrown them away in the waste basket, and I have never kept them. I hunted all through my box there to see if I had them, but these are the only ones I found. I found one or two others, but they were not important. They didn't throw any light on it.

Q. I see in the "Chronicle" a statement that W. H. H. Hart is mentioned in regard to the Public Administrator bill. A. That is an error. I was talking with a "Chronicle" reporter the other evening about it; it was not about that. Mr. Hart was an attorney in some contested case up here, and the way it was, these reporters wanted to know, and of course, naturally, I told them, they would come to me because I had been so many times in the Legislature; they would come to me for information, and wanted to know how to do these things, and they must have seen Hart talking to me. One day Mr. Hart was talking to me, and wanted me to assist in drawing up a resolution as soon as the contest was over between these parties, and to introduce this resolution for compensation for his services. And I was just talking, and the reporter thought I was talking about legislative business. I suppose that was how that happened. He sort of asked me one day if I would help him, and I told him I would, and I got a copy of the Journal of the session that Mr. Traylor's seat was contested by Pindar—and he has used that same form of resolution. That is all I had to do.

Q. Did he ever ask you to change the position of any bill on file? A. No, sir.

Q. Or to do anything of that sort? A. He had nothing to do with anything of that kind.

Q. This is an error in the "Chronicle"? A. Yes; that is an error.

Q. He got it confounded with some other attorney in reference to the administrator bill? A. Yes.

Q. You stated in your examination the other night that some attorney wrote you a note authorizing you to use his name for \$100 to defeat Assembly Bill 74; have you got that note? A. I have looked for that note, and I could not find it; I have looked everywhere for it.

Q. Who was the party that wrote you that note? A. He was a San Francisco attorney.

Q. What was his name? A. Ackerman—it was from their office. It must be him—either him or one of the firm.

Q. Was his name signed, or was the name of the firm signed? A. It was his own name; it was not the firm name.

Q. Was Mr. Ackerman's name signed to the note? A. I am positive it was; yes.

Q. Do you know his first name? A. Either Henry or Charles—Charles, I think.

Q. The firm name was Ackerman & —? A. Yes.

Q. What was the purport of the note? A. Well, to find out what was done to the bill since. I remember the note was to defeat it by any clerical mistake that could be done.

Q. By any clerical mistake? A. Yes.

Q. What do you mean? By having mistakes made in a bill that would appear to be a clerical mistake? A. Yes. It turned out since that there has been a serious clerical mistake in it at one time there, that it was not reported to any person. I reported to Frank Ryan one mistake. That copy was amended under special instructions about four or five times. Of course, all the amended printed copies that go to the printer, go through my hands. I make every amended copy that goes to the printer.

Q. Well, now, Mr. Smith, do you recollect what was the purport of that note? A. No, sir; I do not. I just read the note and put it in my box, and did not pay any attention to it. I looked high and low for it all day Sunday, and could not find it.

Q. Why do you say that the purport of the note was to defeat the bill by clerical mistakes? A. Well, because, as I was just telling Judge Heath, I found that I went and I amended copies, and I says to myself, now that was what that note was for that I got from Mr. Ackerman. It just bore my mind to it. I found a mistake in one copy that came back from the printer. I do not know as it was a serious mistake. If I explain it to you, you might think it was.

Q. What was the error? A. Well, I say that all these printed copies, as amended, go through my hands to the printer, and I make them myself. I think it was the third or fourth amended printed copy under special instructions that were sent to the printer, and when it came back, it was the ninth or the tenth subdivision in here where it says "Any person legally competent." That is one of the grounds.

Q. That was a correct bill? A. Yes. Then this fourth amended copy that came back, it was my copy that went to the printer, which he has got down stairs, and it was the same way, but the printed copy that came back had "Any person legally qualified."

Q. Legally "qualified" or legally "appointed"? A. Legally "appointed;" well, it might have been—"appointed" or "qualified"—I do not know which. But that was one of the errors, and the first time that was shown to my attention, it was drawn to my attention by Ray Falk, and somebody else, and Frank Ryan, and I went down to the printing office, and took the original amended copies, and went down to the printer's office to find out how it could happen. I investigated and could not find out how it happened; but it was not printed as the copy showed. It may have been legally "appointed" or legally "qualified." It is one or the other.

Q. Well, do you recollect at the time that you discovered that error in the printed copy, the substance of Mr. Ackerman's note? A. That is what I said to myself—"here is what Mr. Ackerman wanted me to do," because, I says, here is a clerical error. That just reminded me of it, because I paid no attention to the note after I received it. I just read it and put it away.

Q. You are not prepared to swear positively that there was the substance of Mr. Ackerman's note? A. No, sir; only just from that one instance.

Q. That one instance led you to think that was it? A. Yes.

MR. DAVIS: Has not that been resorted to, to your knowledge, for the purpose of killing a bill? A. I do not know. There are quite a number of ways you can kill a bill. I know of one bill that went to the Governor and they did not discover it until about five minutes before the Legislature adjourned sine die, and the enacting clause was left out of the bill—

the bill that the Governor had—and they had to pass a concurrent resolution in both Houses to authorize the Enrolling Clerk of the House, in which it had originated, to insert the enacting clause. That was the worst mistake I ever heard of. It got to the Governor five minutes before the Legislature adjourned.

Q. Was that the only offer of money that was made to you, Mr. Smith, to defeat that bill? A. That was the only thing that was said to me, yes.

Q. By any person? A. Yes.

Q. Did any other person besides Mr. Ackerman seem to influence you to defeat that bill, or did anything to prevent its becoming a law? A. There were a couple of fellows in the lobby that came to me and asked me what could be done to defeat the bill. I says, "I do not know; the only way you can defeat the bill is to get enough votes in the House to do it." I think I made the remark that any bill that Mr. Ellsworth was advocating, I thought would go through.

Q. Do you know who those persons were that came to you about that A. I did not know then. They were strangers to me. I know them by sight. They are around the Capitol, and in; I see them every now and then.

Q. They did not ask you to do anything to keep the bill off the file, or put it back on the file? A. No, sir; nothing about the file.

Q. Now, Mr. Smith, will you state to the committee the names, if there are any such, of any Assemblymen who have asked you to change the position of any bill on file? A. There were quite a number have asked me to advance their bills, and do the best I could for them, and asked me if I could not do it, but they have not made it a special request that way.

Q. What do you mean when you say, "They have asked you to advance their bills? To take them and put them out of the place where they belonged on the file?" A. Well, I suppose that is what they meant. They would come up and say, "Smithy, cannot you put this bill somewhere for me so I can get it for the first reading? I do not want to go home and have the people think I ain't doing anything for them."

THE CHAIRMAN: Mr. Smith, you stated that there was a reporter saw you in regard to that letter from Senator Moffitt. Do you remember the name of that reporter? A. No, sir; I do not.

Q. Well, look around among these reporters and see if he is present. A. You did not quite understand that portion of the testimony. I said that this reporter had told me he had seen the letter that I had written to Mr. Moffitt.

Q. Which reporter was it? A. The gentleman who is sitting right behind you now.

Q. You say that he saw the letter that you wrote to Mr. Moffitt? A. I do not know whether he said that or not, but he and I had a conversation about it—about an opium bill—and he said that Senator Moffitt explained to him that my letter was satisfactory, or something to that effect.

Q. Will you state to the committee the contents of that letter that you wrote to Senator Moffitt? A. The letter was in reference to the letter that Senator Moffitt wrote to me, and it read something like this: "Friend Moffitt—I am sorry that I disappointed you, that I could not place the bill ahead as you requested on the file. But I will endeavor to hold the amended bill back from the printer and from engrossment as long as I can until I hear from you, if this will be satisfactory for your purposes. Yours, etc. Ed. Smith." It is about something like that I wrote to him.

Q. That letter was written in consequence of a letter you had received from Mr. Moffitt about that opium bill? A. It was written at his request,

to show some folks that he had been to me, and that he had done all he could for them.

Q. You say you stated in that letter that you were sorry that you could not advance it. Did you mean that you were sorry? A. The reply was at his request.

Q. Did you mean to advance or to hold back that bill? A. He wanted it advanced. I said I was sorry that I disappointed him in not doing it.

Q. In not advancing the bill? A. Yes.

MR. ELLSWORTH: Mr. Smith, you stated that he said that he wanted it advanced. A. Excuse me—to hold it back, I should have said.

THE CHAIRMAN: Is there anything else in connection with this opium bill that you have not stated to this committee? A. I think that young gentleman told me—I do not know his name—I think he told me at the time, when he looked at the bill and seen the amendment, he said that Senator Moffitt would be satisfied with that.

Q. Who was that told you that? A. This young man there. He said that Senator Moffitt would be satisfied; that he would be satisfied with the amendment exempting wholesale liquor dealers.

MR. ELLSWORTH: Mr. Smith, are you sure that you know the man that you had that conversation with? A. I think that is the gentleman.

Q. I asked you if you are sure that Mr. Phillips is the man that you had this conversation with? A. No; I am not positive of it. As I told you to-night, it was a gentleman that looked very much like the Private Secretary of Mr. Hearst, and that he was a newspaper man.

Q. Do you know what paper he is interested in, the person that you refer to? A. No, sir; I do not.

Q. Do you know what paper Mr. Phillips is connected with? A. No, sir; I do not.

Q. Where was it you had this conversation? A. It was at the Clerk's desk.

Q. Do you recollect the day of the week, or the month? A. Well, it was at the time I wrote that note to Mr. Moffitt; just about that same day, or the next day afterwards. It was either that afternoon or the next morning.

Q. Well, you are not positive who the man was—whether Mr. Phillips is the man or not—that you had the conversation with? A. Well, I would not swear positively, but I am pretty sure it is, though. I am pretty sure. I may be mistaken about the appearance of the man.

Q. Mr. Smith, has any member of the Assembly, to your knowledge, ever tampered with any bill pending before the Assembly, or ever turned over any bill, or any amendment which had been pasted on, or put on by the order of the House? A. I think they have.

Q. What bill was it that you refer to? Do you remember the number of the bill, or do you remember the subject-matter of it? A. I am not positive about that, whether it is the boiler inspector bill or not. I could not tell you for certain to-night, Mr. Ellsworth, which bill it was. I think there was a boiler inspector bill.

Q. Have you any means of ascertaining which bill it was? A. I can, yes.

Q. Do you know that there were any amendments to the bill you refer to; whether it was the boiler inspector bill, or some other? Do you know whether there were any amendments or slips of paper pasted on the bill by order of the House? A. I do not know whether the committee amended it or not, I think there were lots of amendments that were on that bill; in fact, I know they were.

Q. Were the amendments that had been put there by members of the committee, the amendments ordered by the Assembly, do you recollect? A. That is more than I can tell. I do not know if this is the bill or not. There is one bill I know was dealt with that way, but I would have to look into it first.

Q. What member of the Assembly had the bill in his possession, do you refer to? A. I think it was in possession of us at the desk.

Q. In the possession of the clerks at the desk? A. Yes.

Q. Did you see any member of the Assembly take and move any of those slips or amendments? A. The reason I cannot answer that just now is this: that there are quite often that I have sent for members, or members have come up, and especially the Chairman of the committee, and sometimes the Chairman of a special committee that have had the bill under their charge, and they would come up and say that it did not belong there, and they would tear it off.

Q. On this particular bill, were the amendments torn off and afterwards returned? A. In some cases they were, yes.

Q. This bill that you have been testifying to? A. Oh, I do not say that particular bill. I say I have to look into that and see.

Q. You do not say it was the boiler-inspection bill; you say there was one bill treated that way? A. One bill that was treated that way.

Q. Now, that particular bill—you need not state what it was, but it was a bill that you have been talking—were the amendments taken off of the bill, and afterwards returned in an envelope to the desk? A. I think there was on one bill. I think that I sent for those amendments myself, or else I got them out of the Journal—I forget which.

THE CHAIRMAN: Do you mean to say that a member of the Assembly tore off the amendments, and took them away with him. Took them away or threw them down? A. I believe he claimed that they did not belong there.

MR. ELLSWORTH: Did this member of the Assembly return them? Did you send for them? A. I am not certain about that.

Q. Were they returned in an envelope? A. I do not know that they were. I do not know how I got them back.

Q. How did you send for them? You sent to some one for them, did you, or did you not? A. I will have to get that bill and see how it was.

THE CHAIRMAN: How long will it take you to get that bill? A. Well, I will have to go through the bills down below. It will take me half an hour or so. I have a recollection about that now, too.

MR. ELLSWORTH: Have you stated to any one that such an occurrence—that a member tore off the amendments, and afterwards they returned? A. I said in substance about that, yes.

Q. Well, was it true? A. It was true, yes.

Q. How is it then that you do not recollect exactly about that? A. Well, I gave the same statement to a certain party just about what I stated here this evening, but I am not positive about that, as I say. I have got to look into it and see. I did not think that would be brought out. If I thought it would have been brought out, I would have looked into it to-day.

Q. Did you state who the member of the Assembly was that did that? A. I said I had an idea who it was, but I did not wish to charge any member of the Assembly with anything like that until I was positive of it.

Q. Can you, and will you ascertain? A. I will. I will make it my business to look for that bill as soon as I get done here. I think I told this party that it was the boiler inspector bill.

THE CHAIRMAN: Mr. Smith, you will please make a note of that, and I will ask you about that matter to-morrow.

MR. ELLSWORTH: Now, Mr. Smith, will you state whether any member of the Assembly has ever asked you, and give the name of any member of the Assembly, if any, who has ever asked you to change the position of any bill on file, to take it out of its position where it belonged? A. There have been numbers of the members of the Assembly come to me and asked me to change the numbers of their bills on the file; that is, to put them on the file as far as I could do it for them.

Q. To take them out of their position from where they belonged? A. If I could stretch a point and do it, yes.

Q. Tell us one name then? A. Well, in the first place, there were these bills for claims against the State, such as deficiency bills for the erection of buildings, and such things.

Q. You can state who it was; you need not go on and state all that. A. I will have to get the authors of the bills. There are different ones. They would say that bill belongs on the Special File. Well, I would say, I cannot put the bill on the Special File unless Mr. Jordan will order me to do it. They said, "Never mind Mr. Jordan, you go ahead and do it, and it will be all right." There have been two or three members asked me to do that. For instance, take the one case of Mr. Taylor from Sacramento. He went to Mr. Jordan and got Mr. Jordan to order one bill placed on the Special File, and he came to me and he gave me the title of two bills to place on the Special File, and one bill was this bill that Mr. Jordan told me could go on the Special File, and I turned around and said, "Mr. Jordan, here are two bills of Mr. Taylor's to go on the Special File," and he says, "No, sir, there is only one bill goes on the Special File, and he has no business to go to you and ask you to place another bill on the Special File." So I placed that bill of Mr. Taylor's back on the General File, where it belonged.

Q. Mr. Taylor claimed that they belonged on the Special File under the rule? A. Yes.

Q. Well, that is not what I asked you. I asked you where the members came and asked you to take a bill out of its proper place and advance it, or to take it out of its proper place on the file? I do not mean where they claimed that the rules required it, but where they sought to get you to do that in defiance of the rules—to advance it or put it back in defiance of the rules? A. There were a couple of gentlemen up from San Francisco on behalf of Bill 55, called the "white labor stamp" bill.

Q. That was the label bill? A. Yes. This young fellow that was up here, he came to me and wanted me to advance his bill on the file so as to get it to be read.

Q. Do you mean a member of the Assembly? A. I will just connect it now. And he brought over Mr. Cohen, the man that introduced the bill, and Cohen told me it would be a favor to this young fellow by the name of Dobbin, if I would advance that bill for him on the file. Also, Mr. Davis used to jaw me because his bill would be down all the time. He used to find it out of place all the time, or thought his bill was taken out of place all the time.

MR. DAVIS: Has there been any influence brought to bear on you to keep that bill down? A. No, sir; not a bit.

Q. Was there any influence brought to bear on you when that was ordered to be placed on the Special File, to keep it back on the General File? A. No, sir; that was an error of mine, and the moment you drew my attention, I told you it would be changed.



MR. ELLSWORTH: Then Mr. Davis' bill was down further than it ought to be on the file? A. No, it was in its regular place on the file, and one day it was ordered to the Special File, but I had it in its regular place, as if it hadn't been ordered on the Special File. It was an error of mine in transferring it.

Q. Was it that Mr. Davis was complaining about? A. Yes. He came to me one morning and asked me about it. I was kind of surprised, and I says, we will have it taken up, and I will paste a slip on Mr. Jordan's file; and so it came up in its regular order.

Q. That doesn't come within the cases I asked you about? A. Here is Mr. Mann's name. There was a bill pointed out to me on the file—I cannot think of the number of the bill; I do not know what the bill is; but the Engrossing Clerk of the Assembly asked me to advance that bill for him on the file; which file it is, I do not know. He asked me to advance it, and I did not do it.

Q. Do you mean Mr. Shaen? A. Yes.

Q. Well, why do you connect Mr. Mann's name with it? A. Well, I am just telling you; when these fellows come, I didn't do it, and the next day Jake Shaen complained to me about it, and then went down and spoke to Mr. Mann. I know it was Mann that was interested in it.

THE CHAIRMAN: You mean that Mr. Mann was interested in the bill? A. Yes.

Q. Do you refer now to the insurance bill? A. I do not know what bill it is, Mr. Heath. If I would pay attention to all the bills that people asked me about, I would have all I could do. Mr. Mann came to the desk, and we had a talk. Mr. Mann came up to the desk, and I says, "Mr. Mann, how is this? Mr. Shaen wants this bill advanced." "Well," he says, "all right; whatever he wants to do, it is all right." I connect with Mann in that respect. I do not know what bill it was, though.

THE CHAIRMAN: Do you know who the author of that bill was? A. No, sir; I do not.

MR. ELLSWORTH: Have you any means of ascertaining what bill it was? A. I can go to work and take all my files and see what bills have been marked, and I can tell.

Q. You think you could tell by looking at your files? A. When any one would come up to the desk and asked me to do anything like that, I would show them the bill and they would mark it, and maybe put their name there, or initial, over the mark.

THE CHAIRMAN: Mr. Smith, do you say now that you have the initials of members of the Assembly, or clerks of the Assembly, in connection with those bills? A. No, sir; I say different people that just came up to me.

Q. You have the initials of persons who came up to you, and asked you to change bills on your files? A. They are on my file now, some of them. I do not know as they are all of them on, but there are some of them, and different marks and cross-marks are made on the file.

Q. Now, by reference to that file, to-morrow, can you refresh your memory so as to tell us more about that matter? A. Yes; I can.

Q. Well, please remember about that matter. A. All right.

MR. ELLSWORTH: Mr. Smith, are those marks or initials on the weekly history of bills, or what are they on? A. No, sir; I keep a daily file, and I have a memorandum paper on top of it, and as I get done in the night time, I fold it up and put it away, and it has got all my quotations on.

Q. Then these marks or initials are on different files, are they? A. I say some of them are; I know they are.

THE CHAIRMAN: Then let me understand that, Mr. Smith. Of our daily files you have a copy? A. Yes.

Q. To make up the copy for the following day? A. Yes.

Q. It is on that copy that you say these marks and initials are made? A. Yes.

Q. Do you remember whether Mr. Mann put his initials on that bill that you referred to? A. That I cannot say. I do not know. I do not think he did. He may have, but I do not think he did.

Q. Did anybody put their initials on it? A. Some did; yes.

Q. Did any person put their names or marks upon that bill which you connect with Mr. Mann, so you could identify it? A. I could not say that. I cannot remember that.

Q. You could not tell that without looking at your files? A. No, sir; I could not.

MR. ELLSWORTH: Do you know of any other names now? A. I was going to say, Mr. Ellsworth, by going through those files of mine, I can tell better from them.

Q. If you remember any others to-night, give them; give us the names, such as you remember, then you can make further search. A. Well, somebody—I do not know who it was—came to me about the Deputy Superintendent of State Printing Office bill. Now, this I cannot place—who introduced that bill. I think it was a Senate bill. There was somebody wanted that bill advanced on the file.

Q. Was it a member of the Assembly? A. I think it was a member of the Assembly.

Q. You do not recollect who it was? A. No; I have a faint recollection.

Q. Have you any memoranda by which you can ascertain? A. I cannot tell the date that that bill was reported back; that was the day that the party came to me, and I have got my reports of that day, and I can tell, I think.

Q. You think you can tell by consulting the memoranda that you have who it was? A. Yes; I think I can.

Q. You do that before the next meeting of the committee, will you, Mr. Smith? A. Yes, I will.

Q. Well, are there any further names? A. That is about all I can think of. I will look over my list and see the different bills.

Q. Will you examine such memoranda as you have, and gather your recollection on the subject, and be prepared to state, at the next meeting of the committee, all about it? A. There were two bills connected with the State Prisons that were asked to be advanced. I do not know who came after me about those two bills. They were big deficiency bills to pay some bank here.

Q. Did any member of the Assembly ask you to advance those bills? A. That is what I am trying to think about now. I can think better from my files than I can now.

Q. Did any member of the Senate ever ask you, except Mr. Moffitt, to take any bill out of its proper place on file? A. Excepting that one Senator, and he did not tell me to take it out of its place on the file, but he told me to push it as much as I could for him—that bill of \$67.

Q. In that case, you say, there was no request of you to tamper with the files at all? A. No, sir; not at all.

Q. To help the bill as much as you could? A. Yes.

Q. The bill of \$67? A. Yes. There was a deficiency of \$67 in the Railroad Commissioners' office.

Q. Mr. Smith, you stated, the other evening, on your examination, that

nearly every day some one approached you with a request for you to change the position of a bill on the file. You have now testified with respect to members, and you say as far as you can recollect to-night? A. Yes.

Q. Now, were there other parties, not members of the Legislature, who approached you with such requests, that you can now recollect; if so, please state who they were. A. Oh, there were different ones.

Q. Well, state who they were.

THE CHAIRMAN: Let me call to your mind your answer the other day. You stated you had been approached, or had offers every day, and sometimes two or three times a day, and the average was about once a day. Can you recall the names of any member, either of the Assembly or outsiders that you referred to, when you gave that answer? A. Well, it got to be so common that I used to laugh at them when they came up. I used to look at it as a joke, or something of that sort, it got to be so common, and I never paid any attention to them—never paid any attention to the bills even.

Q. Then, we are to understand that it was a very common thing for people to come up there, and ask you to change your file? A. Yes. The last few weeks I did not pay any attention to them at all; I would not bother with them.

Q. Now, your answer was a pretty explicit one the other evening? A. Yes.

Q. Stating that you were approached, and had been offered, sometimes three or four times a day, and would average about once a day. Cannot you, in your mind, now, remember any one of those gentlemen? A. Yes, I can remember them, if you want to know them.

Q. That is what I am trying to get at. A. Well, there is the Committee Clerks, and your Assistant Journal Clerks, and your Watchman; they have all been after me, every one of them.

Q. To change the files? A. Yes.

Q. Well, please name some of the Committee Clerks—there are about forty or fifty? A. Well, there is one of your Committee Clerks—a lady—she came up there a couple of times and asked me if I could not possibly advance her bill on file; one of the Silk Culture bills. That is one of them.

Q. Well, go on and give us some more of them. A. Well, there is a bill that amends the section of the Code requiring certain officers to remain over at the close of the session, who will receive a salary of fifty dollars, and there is a bill introduced and on file now, that they want to add a couple of other clerks to be kept over.

Q. Well, who wanted you to do that? A. Well, the whole Journal Clerks office wanted that done. The whole of the Journal Clerks of the Assembly.

Q. All the Journal Clerks of the Assembly? A. Yes.

Q. Did any of those gentlemen personally request that that be done? A. Yes, they did; both of them.

Q. Give us the name of that man? A. Well, one was Mr. Albert Hart, the Journal Clerk, and Mr. Chapman, the Assistant Journal Clerk.

Q. Did they ask you to advance bills, or advance those bills on the file that they may be reached at an earlier day than they would otherwise have been reached? A. Well, they told me to put it on the files as far as I could, so that it could be gotten up as soon as it could be gotten up, and one day there were three bills in which I had a claim, and two other parties had claims, and under the rule one day you remember that we put them all on the Special File—some fifty or sixty—and then put them back on the General File, and in putting them back, I made a mistake and the

Journal Clerks' office insisted that it was down three or four numbers out of its place. In rearranging them, I got quite a number of bills out of their places; in rearranging my files for the next day, I got those Journal Clerks' bill down a little too far, but I advanced that in its proper place on my own motion.

Q. So as to have it in its proper place? A. Yes. It was an error in getting it down three or four numbers farther than it should have been, and I suppose they took advantage of that fact, thinking that if I could advance it that way, that I could advance it farther.

Q. Do you remember any other bills in which the clerks or outsiders desired the bills should be changed on the file? A. The principal instance I cannot call just now.

Q. Do you remember whether any requests were made of you with regard to any constitutional amendments, resolutions, or proposed amendments to the Constitution? A. No, sir.

Q. To alter in any way the position they had on the file? A. No, sir; not that I know of. I do not suppose that I was ever spoken to about a constitutional amendment.

Q. Mr. Smith, do you remember that there has been a claim here by Mr. Jordan with regard to some money up at Folsom State Prison? A. I think I do; yes.

Q. Do you remember that any request or attempt to change that bill on file was ever made by anybody? A. No, sir; not to my knowledge.

Q. Do you remember any other bills where claim was admitted to the committee, and the committee reported on those claims—do you remember of any request, or desire being made to change any of those bills upon the file? A. No, sir; I do not recollect of any. There might have been requests made, but I do not recollect now whether there was any or not. I do not think there was, though.

Q. By reference to your notes can you tell us to-morrow whether there were any such requests made with regard to those bills that I have been asking you about to-night? A. Yes.

Q. Please remember that to-morrow and give me that information. A. I will.

MR. ELLSWORTH: Mr. Smith, did any of those parties, whom you have just stated desired to have bills advanced on the file, offer you any money? A. No, sir; never. They wanted it done as a favor.

Q. You stated the other evening in answer to this question: "How many times has money been offered to you to make changes in the file?" And your answer was: "Every day during the session, and sometimes three or four times a day, and the average about every day." A. Well, it is just certain instances, as I told you before.

Q. You stated the other night, did you not, that money had been offered you nearly every day during the session? A. Yes. But what I meant by that was and what I mean now is, that they wanted me to do that, and they would see that I would be fixed for doing it. They would want to see the work done first before they would pay me.

Q. Now, I ask you if these parties—these Clerks, Mr. Hart and Mr. Chapman—ever did? A. No, sir; they never did.

Q. Did they make you any promise, or any offer of any kind? A. No, sir.

Q. Did this lady Clerk on Silk Culture ever offer you any money? A. No, sir. The Clerk on Silk Culture came up to the desk, and she asked me if I could not advance her silk bill—the bill that Mr. Knox has introduced,

I believe—and I said I could not possibly do it; and she begged of me, and the next day she came up and was almost crying, and she wanted me to do it, and I would not. But her bill has been read the first time already now. They have all been read.

Q. You stated, did you not, the other night, that money had been offered you nearly every day? A. I had been promised money.

Q. Well, cannot you remember who any of those persons were, who made those promises other than you have stated? A. No. I will have to look into that a little bit first. You see they used to go up there, and I used to fool with them so much, and it got to be such a common thing that I did not pay any attention to it afterwards. I thought they were jesting, and I did not pay any attention to it.

Q. And you could tell by reference to those files? A. I think I could, yes.

Q. In which cases money was offered you? A. Yes.

Q. Did you make any memoranda on your bills as to whether money had been paid? A. No, but I could tell from the files.

Q. Please examine your files, Mr. Smith, and be ready to testify to it to-morrow. A. I have got them all together, every one of them.

MR. PHILLIPS: I want to ask Mr. Smith one or two questions.

THE WITNESS: I may be mistaken about Mr. Phillips. I am not positive about that.

Q. I want to ask you if you have a pretty clear recollection of that transaction in regard to that Moffitt letter? A. Yes. Not about you. You may be the wrong party.

Q. What time of the day or night did this transaction take place? A. Well, it was about three or four o'clock in the afternoon.

#### E. A. PHILLIPS.

Sworn.

THE CHAIRMAN: You can make any statement you wish, Mr. Phillips. Answer—I want simply to say this: That I have had my desk in the Assembly all the time since I have been here, and I have been here from the opening of the session. I have not been in the Senate at any time at night, until after the Assembly had adjourned. I gather my data in the Assembly, and at night I go into the Senate and get what information I can there from the other newspaper men, and from what few Senators I know. I am not personally acquainted with but three Senators, and I do not know by sight more than a dozen Senators, and probably not that many. I could not pick out Senator Moffitt from the Senate to save my life, because I do not know what kind of a looking man he is. I do not know him at all. I have never spoken a word with him that I know of, and I have never had any conversation with him of any kind that I know of, and I have never had any conversation with this man in regard to that letter, or about any bill, and he is wholly mistaken about it, or he is the most malicious liar—I don't know which, gentlemen. That is pretty strong language, but it is a God's fact. I am inclined to believe that the latter is true.

#### L. E. BULKELEY.

Sworn.

The testimony of the witness E. J. Smith was read by the reporter as far as it related to the witness, L. E. Bulkeley.

THE CHAIRMAN: Do you desire to ask Mr. Smith any question in regard to that statement? Answer—I do not desire to ask any man any questions that makes such a statement as that. I have simply to say, gentlemen, that I never proposed to any living being to advance that bill on the file, or to do anything in relation to bill that was improper. This Mr. Smith I knew some years ago. The last time I met him in San Francisco, he borrowed a dollar of me, and he said he would pay it the next day, which he never did. Two or three days afterwards, he struck me for another dollar, and I think I said I was in a hurry, and went off. Soon after, I came here to Sacramento in regard to this bill; I met him. He says to me, "What are you up here for?" "Well," I says, "I am here to get a bill passed through the Legislature; it is a just bill, etc." "Well," says he, "you can." Says he, "Is there any money in it?" I says, "No, not a dollar." "Well," he says, "then you cannot do anything." He says, "You have got to put up." "Well," says I, "then it won't go through." I do not know whether it was that conversation or some other after, he kept after me all the time, and he says, "If you get the bill up," says he, "they will fix it on the file," says he, "so that your bill will never get through." "Well," says I, "can they do that?" Says he, "Yes." Says he, "I can take care of it, if you want me to." "Well," says he, "you have always been a good friend to me, and I will see that they do not play any games on you." "Well," I says, "I never was in the Legislature before, and I do not know what games they can play." It was the first time I had ever been before the Legislature in my life, and I knew nothing about this thing. I came up to get through an honest, square bill, and I had no intention of doing anything that was not perfectly proper, and I have done nothing which was not perfectly proper, I think. Well, he was at me a half a dozen times. I believe I went down, and I did ask him to send down some bills, which he did. When I came up here, he struck me for more money, and I says, "How much is it?" He says, "\$5." I gave him \$5. And then this bill was introduced, and the committee reported on it. I heard at night that the committee had reported on it, and reported unanimously in favor of it. I noticed the next day that it was not on this file, and I met him, I think it was—gentlemen, I do not pretend to give this exactly to the minute of the time, but this is the substance of it—and I says to him, says I, "Why is not that bill that is reported here, on that file?" "Well," he says, "I do not know," and he said he would look after it. Well, it seems that this bill was reported, I think, on the seventh. I cannot tell you the dates exactly, but I know that it was reported, and I knew it was several days before it appeared on the file, and I thought there was some shananigan, as he said there were those things played, and I asked him about it, and then, I believe, it did come on the file. I think, the first day it was on the file—I could not tell you the exact day that it was on the file—he met me in the street, and he said he wanted to take his girl to the theater, and asked me for a couple of dollars, and I gave it to him; and, I believe, a few days afterwards, he asked me, and he says, "I want some more money to treat the boys," or something—I do not know what it was—and I gave him—I do not know what; I could not tell you. I gave him just the same as I would anybody who would stop me in the street and ask me for money to get a drink or anything of the kind, and perhaps it was a dollar, or perhaps it was a dollar and a half—I could not tell to save my life, because I do not remember. As to asking him to ever advance that bill on the file, I did not suppose such a thing could be done. I never thought of such a thing. Why, gentlemen, I could not afford to have done such a thing, if I ever did in my life, because it was a fair, square

bill; a bill which I had only asked for what I believe was due from the State to this lady, and as I told the committee when I went before them, I says, "Gentlemen, here is a bill that I have no money to spend for, and I will give you the statement in regard to this case." Before that committee I just gave the record of it I had, and the committee reported unanimously in its favor. I knew nobody, nor could I get anybody to help her in managing this matter, and I did not know how to do it, either. Smith had offered so very kindly to keep me from being imposed upon, that of course I placed confidence in him. In regard to this printing office, I will have to give this in the order that it occurs to me. There was one day that that bill was on the file in a certain place, and the next day it was much lower down, and I spoke to him about it. I says, "Your file seems to be managed very carelessly; how is this?" "Well," he said, "That was a mistake of the printer." Now, that was all that I ever said to him about the printer, or anything in relation to it. But when I went to San Francisco, in regard to these letters—when I went to San Francisco—I was obliged to go down—this bill was not on file—I do not remember—I think it was not on the file—but at any rate, before I left, I asked him how that bill stood, and he said that after it had been on the file, he said that it would go up for the first reading about Friday. And when I got down there, I found it did not come up for the first reading, and that was the occasion of the letter I wrote to him, and he said he would look after it. I saw that there was nothing done while I was away, and then you will remember, gentlemen, that frequently men introduce bills, get the rules suspended, and introduce bills out of order, and of course in that letter I wanted him to see if there was any motion to introduce bills out of order, and, if Mr. LaBlanc should not be in the House, to see anybody else, and if they moved bills out of order, to see that this was moved out of order in the same way. That was all I ever did in connection with the files of this Assembly.

Q. What was that? A. I said that frequently I knew that there was motions—that a gentleman would get up and make a motion to suspend the rules, and take up a bill out of order, and three or four bills would be passed and then it would be stopped, and I asked him to see to that, and that was the occasion of writing that letter—that if such a thing occurred, for him to see, if Mr. LaBlanc should be out of the House—that is the purport of that letter—that he would see that somebody moved that bill out of its place in the same way as the other bills were moved, so as to advance the bill in that way. That is the only thing that I ever asked done in regard to this thing. I certainly did not want Mr. Smith to do anything in the matter that was improper. I was perfectly thunderstruck that such a statement should have occurred, and I said that I did not think it possible—I have said to two or three that I did not think it possible that Mr. Smith could have made such a statement as to my making any threats against him. I certainly did not do it. I never thought of such a thing. Mr. McCausland came to me and said that it was reported by him that I had made threats against him. I said that there was not a word of truth in it. In regard to those letters, I say that this gentleman here—

Q. Who do you mean? A. This gentleman here [pointing]. I think that this is the exact language that I used, and Mr. McCausland can correct me, if it isn't. We met Mr. Smith very unexpectedly—I was coming up—Mr. McCausland said he wanted to see me—and I was coming out of the hotel, and we just met Mr. Smith, and he says, "How do you do, Bulkeley?" And I made a remark, and I says, "Have you got those letters?" He says, "Yes." I never asked him for any letters. I do not

want to say a word here that is not exactly correct. I did not demand any letters from him. I simply want to say that I did not demand any letters, and I did not think of asking him for any letters; I just merely asked him if he had those letters. I wanted the letters where anybody could see them. Those letters could have been read to this House at the time they were sent. I thought nothing of the letters, and I certainly think, gentlemen, that I am too bright, if I had intended to have done anything wrong, to have written letters to a man in regard to it. There is nothing in those letters that I would not just as soon have been published the next day, or read to the House. I had to be away, and I knew that sometimes things would be neglected, and as he had said that he would see after it, I did so. As to promising him \$50 when the first reading of the bill was reached and the second reading of the bill, the first I ever heard of such a thing was when I saw it in the paper. I certainly never made any such promise to him of any kind or description. If he did anything for me in the matter, I expected to pay him as I would anybody else, but I did not expect him to do anything that was wrong. He was not a member of the Assembly, and I ought not suppose it was anything improper for him to assist me while I was away in having a fair hearing of that bill, and I expected of course if he did anything for me, to compensate him for it, but as to promising \$50 when the first reading of the bill was reached, that is certainly not correct; and as to wanting those letters, I never wanted them. I never asked anybody to get them, never thought of such a thing, and as I told you, there was nothing in the letters that I would not just as soon have been read before the House the next day. All that I care about this thing, gentlemen, is that I do not want this bill prejudiced by any attempt to make out that I have tried to do anything in regard to the bill that was not perfectly fair and square. I certainly never intended to do it, and I did not intend to spend any money to advance the bill in any shape or form, because I had none to spend. I came here this last time at the request of Mr. Mastie, whom I presume you know, of Alameda. He represents this girl who is one of the heirs of the estate, and we were trying to get this bill through fairly and squarely. I had given Mr. Smith the credit to think that he had been mistaken in regard to it, and I have been told by several people that they did not believe he said it. I did not believe he said it—what was in the paper—and who the people were that told me I could not tell, because people speak to me every day that I do not know, and I says, "Well, if he did not say it, I have nothing to say." "Well," says I, "it was reported in the papers that he did say it. And I have avoided speaking to Mr. Smith at all in regard to the matter, because after that outbreak, I thought it was unsafe to speak to anybody." I do not know as there is anything else for me to answer in my testimony. I do not think of anything. But I will say, gentlemen, in regard to this matter, that I have done nothing. I have had no conversation that I would not just as soon have published to the world. Now, I was going to say in regard to one of those letters. It looks to me—I am very much in the habit of underscoring a word, when I want anybody to see it—and it looks to me as if there have been lines put there that were not put there by me. I do not think I ever put as many lines as that. I wanted him, during my absence, to see that there was no bill taken up out of order, unless mine was taken up, too.

Q. Is that all you desire to say? A. Well, I cannot think of anything else. If there is anything else that you desire to ask me any question about, I wish you would do it.

Q. Mr. Bulkeley, what do you mean by the language in this letter dated

February twelfth, "Don't spare anything; drive that business, and I will see you as soon as I arrive?" A. Well, I wrote that at the office of the hotel, and I was surrounded by people talking to me at the office of the hotel, and I wanted him simply to see that this got along as any other bill did.

Q. You say you hardly believe you put all these lines—these underscoring lines? A. I will not say that I did not.

Q. Look at them and see if they do not appear to be in exactly the same ink as the body of the letter? A. I do not lay any stress on it, but it does not look to me as if I made so many underscoring lines as that. LaBlanc is underscored to show who he was.

Q. Those are your underscore marks? A. Yes. But in regard to that matter, that is underscore, it was nothing that I wanted that was unfair.

Q. I merely asked you the question, because you said you did not think those lines were all put there by you? A. I will tell you I am in the habit of always underscoring anything that I want to call attention to.

Q. On further reflection and examination of that letter, Mr. Bulkeley, in regard to those marks there, do not you think they are all yours? A. Well, they may be, I won't say they are not.

Q. Well, don't you think they are? A. Well, they may be, I won't say they are not. But I will tell you in regard to that—

Q. I observe that most of your letters have more or less underscoring? A. I am very much in the habit of it, and especially if I am writing to a man that is very busy. For instance, he has other matters, and looking for Bill 295, I would underscore that so that he would notice it, and I will tell you why I write it that way. On the first day that that bill was brought up, I think it was Mr. Young that introduced it. It was introduced at the report of the committee, and he was out when the reports came in, so that he lost that day, and I do not know but that he may be out. I thought Mr. LaBlanc might be out when such an order was made, but when the rules were suspended to take up bills out of order, and I wanted, if there were any bills taken out of order, that this should have a fair chance with it.

Q. Are you an interested party in the estate of Aurelia Pfeiffer? A. Yes, in this way. I want to explain to you about this case. I have heard that this was a bill gotten up in my interest. I will tell you just how I am interested. For over five years I have been doing business for Mrs. Pfeiffer, for which I have received no pay; and not only that, I have advanced her money. It seems that about a year before she died—she died while I was up here trying to get this bill through—she made a will, drawn up in her own handwriting, and gave it to some ladies in Oakland that she knew to keep for her, and they told me of it the day of the funeral, and I then notified the niece of Mrs. Pfeiffer and her friends to go and ask to have this will opened, and it was opened, and there we found this autograph will, in which she stated that she left one half of this estate to her niece, appointed me executor, and as full compensation for my services as executor and, as she expressed it, because she had found me a true friend, an honest counsel, she left me the other half. Now, in regard to my interest in this bill, gentlemen, I have no interest in this bill further than this: there is a mortgage on this estate that Mrs. Pfeiffer had to make some years ago, before I knew her. She had to get this mortgage to support her nephew and niece—both were sickly—and to pay the taxes on the land, and for her living expenses. On that mortgage suit has been brought to foreclose it, and if that mortgage cannot be paid there is not a dollar of the estate. It isn't worth a dollar, and if it cannot be paid—if this mortgage can be paid off—of course, there is nobody to raise this

money but this sickly niece—but if the mortgage can be paid off and that property put in a company, as we had arranged properly to do before she died, there would be a large estate there, probably \$200 or \$300, perhaps more. It is just on the turn of the wheel whether that could have been done, and that is the only interest that I had in this bill, was to have that mortgage paid off and have something left for this niece, for every dollar that there was over this—and there is very little over this—would be paid to that niece. I was obliged before I left San Francisco, and I have the receipt in my pocket, to advance it out of my own pocket \$40 to pay her board. And she has been supported by her aunt, and she is not able to do anything. And, as I said in regard to my interest in that estate, I have offered it to any lawyer. I told Mr. Mastic himself, because Mr. Mastic and I consulted about this matter, and I will offer it to any lawyer, and I offer it to you, Mr. Ellsworth, if you will take that estate and stand right in my shoes I will walk out to-morrow, because it is no sinecure, I will assure you.

MR. ELLSWORTH: I am not looking for anything of that kind. A. I merely stated that, Mr. Ellsworth, so you could understand my position in the matter. The estate, if this claim cannot be paid, then there is nothing at all in it, as I say, and the woman would have to go to the poorhouse, and it has been represented, I know, here in regard to this bill, and all I care about this bill—I think my reputation is too well established to have anybody charge me with attempting to bribe anybody. I never did it in my life, or anything of the kind. But I do not want this bill hurt, because it is a bill for \$4,804 for water that has been taken from this land by the Regents and sold some five or six years ago, and the estate has the money, and the balance is for water that has been taken out by pipes run in from the University into that land, and used for the support of the University. There is nothing about this bill that I want, or have ever attempted to conceal in any manner, form, or shape. I simply want to say what the bill is.

MR. DAVIS: Do you know what date that bill was reported back? A. I could not tell you, sir.

MR. ELLSWORTH: You stated, Mr. Bulkeley, did you not, that the bill was reported back three or four days before it went on file? A. I do not think I said three or four days. I think I heard that it was reported back. I heard that the committee had reported unanimously in its favor, and the next day it was not on file.

Q. Did you go to the Chairman of the committee to make any inquiries on it on account of your being disappointed in not finding it on the file? A. I do not know, I could not tell you what I did, Mr. Ellsworth. I did all I could in reference to this bill that was honorable. I do not remember now what I did in reference to it, but I believe that it was delayed.

MR. SMITH: Here is the record reported back on February nineteenth; recommend passage as amended; here it is on file February tenth.

THE CHAIRMAN: Who keeps this record, Mr. Smith?

MR. SMITH: Mr. Marston.

A. You understand, Mr. Smith, I do not say that it was on file the day that it was reported in the House, but I say it was not on file on the day that the committee told me that they had reported. Do not understand me as saying that it was not on the file the day after it was reported in the House. I say it was not on the file the day after I understood the committee had agreed upon it. That is what I said. That is a different proposition. I do not mean to charge anybody with not performing their duty as to that, but I thought it had been reported back, and what I said to



Mr. Smith, was that it was not on the file, and then I believe he told me that it had been reported in the House.

TUESDAY EVENING, February 22, 1887.

F. D. RYAN.

Recalled.

THE CHAIRMAN: Mr. Ryan, you have been sworn in this case? Answer—Yes, sir.

Q. I want to ask you a little in regard to the procedure and the run of bills here in this House. When a bill is introduced, the first time you read from the manuscript, do you not? A. No, when a bill is introduced the first time I simply read the title of the bill, and the Speaker of the House orders it to some committee.

Q. I made a mistake; I meant the first reading. When you read a bill on the first reading you read from the original bill, do you not? A. Sometimes, and sometimes I read from the printed bill.

Q. Do you have the printed bill before the bill is read? A. Always.

Q. I will commence back. That goes back a little further than I imagined. Will you please state to the committee what the custom of the Chief Clerk is from the time of the introduction of the bill until it passes through to engrossment? Give concisely each step taken by the Clerk. A. Well, the moment a bill is introduced I read the title of it. The Speaker then makes an order, and reference is made to some committee. Then that reference is indorsed on the back of the bills, and the bills, as they come in after that reference is made, are all properly backed, indorsed on the back with the title, with the name of the author, and with the name of the committee to which it is referred. Then that bill is sent to the printer.

Q. Before it goes to the committee? A. Yes, sir. After its return from the printer then it goes to the committee, a receipt is taken from the Chairman of the committee for every bill, and then after the committee have finished with the bill—finished the consideration of it—it is reported to the House. Then it goes upon the file in the order in which it is reported back. If the Committee on Judiciary report back seven or eight bills, they go upon the file in the order in which they are reported back. If the Committee on County and Township Governments come in with their report, their bills go on file in the order in which they report them back. That is a provision of the rules, and the bills shall go upon the file in the order in which they are reported back from the committee. Then the bill goes upon the file in the regular course, after the first reading. After it is read the first time—upon that reading they are read from manuscript or printed bill—but as a matter of convenience, I generally read from the printed bill, because it is easier to read.

Q. Let me interrupt you for a moment. After a bill is reported back from the committee and is in the possession of the House, do any of the clerks make an indorsement with regard to that bill on any of the journals of the House, or what is done with it? A. I had forgotten that. Yes, sir; there are three steps. It is Mr. Brandon's duty to indorse the bills, that is to back them and indorse them. Mr. Marston, he keeps the record book; it is his business to introduce the introduction of the bill, the author, and the number; they are all numbered as they come in; he, in his record

book, gives the number of the bill, the author of the bill, and the date of its introduction, and by what committee it is reported. Then the bill passes to Mr. Smith, and he sends it to the printer, and he takes the printer's receipt, and when the bill comes back from the printer, he gives the printer a return receipt, and sends it to the committee; and it does not go on the file then.

Q. You are speaking now before it goes to the committee? A. Before it goes to the committee. These records are kept and copied. The record of the bill is made upon the back of it and the record of it is entered upon the record books, and then it is sent to the printer, and after it comes back from the printer it goes to the committee, and after the committee have finished the consideration of it, it comes back to the House.

Q. Now please describe from the time it goes into your hands? A. It goes back to the House with the report of the committee, the report of the committee goes in the minutes, the report of the committee is indorsed upon the back of the bill; the report of the committee is entered in the record book, then it passes into Mr. Smith's hands, and he puts it upon the file. Puts each bill in the order in which it is returned.

Q. So as to make up his file? A. So as to make up his file.

Q. And the bill is numbered, it has its number? A. Yes, sir; it has been his practice to keep a memorandum book of each bill as it is reported back from the committee as he hears read the report at the desk. He reads the report at the desk and he takes the numbers of the bills as I read them, and as he receives them he enters them—he places them upon the file. After the bill goes upon the file, after the first reading, it is read by the Clerk, and that indorsement is made upon the back of the bill. Reported first time, and the date, then it is indorsed in the record book: "Read the first time and the date;" then it goes to Mr. Smith, and then it remains there.

Q. Does the Journal Clerk do anything with it? A. The Journal Clerk has nothing to do with it; he just makes an entry upon his journal, "Read the first time," and Mr. Smith makes a note of it and he puts it on the Journal, "Bill read the first time." When it is reported the first time it goes to the bottom of the file, then it comes up for second reading; when it comes up for second reading if there are any committee amendments of course these committee amendments are considered—adopted or rejected.

Q. Mr. Ryan, let me interrupt you right there. When a bill comes back from a committee with proposed amendments, and the bill is read on second reading and comes up for amendment, and, for instance, the first amendment is adopted, what is your course? Is it to paste that upon the bill? A. Certainly, the amendments are ordered placed on the bill.

Q. Please describe that so that the committee will understand it. A. Give me an amended bill out of the pigeon hole there. [Mr. Marston handed Mr. Ryan an amended bill.] Now I will show you what I mean by the indorsement; there is a bill—it seems to be an Assembly Bill—we have blank forms of backs; this is Assembly Bill 314. When this bill is introduced the Speaker, Mr. Jordan, reads the title of it; he takes the title from the back of the bill; it is indorsed with the date that it is introduced in the House; this is January twenty-eighth; introduced and referred to Committee on Horticulture. He then assigns it. February fourth it is reported, with recommendation that it be referred to Viniculture and Viticulture. February eleventh it was reported back that it pass as amended; that committee amended it. Now that committee amended it when they put their amendment upon the bill in that form; there is the committee amendment.



Q. Pasted on? A. Yes, sir. When that bill comes up for the second reading those amendments are considered in the House; if they are adopted, I mark the word "Adopted" on it with my initial.

Q. When that bill comes back amended by the committee, with the amendment added, and they are adopted by the House, you leave them pasted on the same as they were pasted on by the committee? A. Yes, sir; certainly.

Q. Any amendment adopted by the House, do you paste on also? A. I paste them on, also, in the same manner.

Q. Paste them on, also, in the same manner? A. In the same manner; and the same amendment goes into the Journal also; all amendments go into the Journal of the House. The Journal Clerk makes an entry of this amendment upon the Journal.

Q. Just take the history of that bill until you take it up to engrossment? A. Then after the amendments are all adopted, and they appear in the Journal the next morning, the bill is ordered to engrossment, the bill is engrossed by the Engrossing Clerk; if it is amended it is engrossed with the amendment, if not it is engrossed with the original bill. Now besides that the bill is also sent to the printer and it is printed with these amendments; it is engrossed with the amendments and it is printed with the amendments. We make a copy, we do not send the original bill the second time with the amendments to the printer, but we take another bill, take the printed bill and amend it according as it has been amended in the House and send that to the printer.

Q. You attach the amendments the same as they are upon the amended bill? A. Yes, sir; or we write them in, for instance—if it is amended we just mark it in here for the printers, and sometimes write it on the margin if it is too large.

Q. You take the printed bill and attach to the bill the amendment the same as the amendment adopted by the committee and adopted by the House, and send that copy to the printer to be printed and have a clean copy? A. Yes, sir; we send it with the amendment to the printer, and the printer inserts the amendments in brackets; if you examine an amended bill you will find that the amendments always appear in brackets, so you will know just what your amendments are.

Q. It comes back from the printer, then what is the next step? A. After it is engrossed and after it is printed with the amendment it comes back and it is put upon the head of the General File, if it is a bill on the General File, if it is on the Special File, it of course goes to the Special File. The engrossed bill always goes to the head of the file under the rules. It is not then subject to amendments except it is referred to a special committee with instruction to amend it in some particular. In this House we probably vary the practice of amending bills on the third reading more than I have noticed before, but it is generally the practice to amend bills upon the second reading and the third reading to put them through without amendments. If on the third reading they are amended by special instructions that bill has to be printed with its amendments and reengrossed with its amendments before it goes to the Senate, and the engrossed copy comes back a clean copy.

Q. Comes back from the printer? A. Well, the printed copy comes back, but the engrossed copy comes back as a clean copy, but always in writing. This bill we indorse the final action upon, and that is the bill we send to the Senate. For instance, here we have a Senate bill; this is not the original Senate bill that was indorsed after it comes to us, it is the engrossed copy. That is the Senate bill, and it is the engrossed copy. The indorse-

ment on that bill reads: "Read the first time and second time and ordered it engrossed." And then, February ninth, read the third time, and then it comes to our House, and it goes through the same stages as the bill originally went in the other House.

Q. When that bill comes back into the House and read the second time, and amendments are made and adopted by the House, please tell me what hands that bill passes through before it reaches, finally, the making up of the file. Please state the routine that this bill, when the amendments are adopted by the House, goes through at your desk? A. Well, the bill, if the amendments are adopted, is ordered for engrossment; as I say, we send the amended copy to the printer. We also send the original bill to the Engrossing Clerk's office, and take a receipt for it, and it is his duty under the law to report that bill back to the House within twenty-four hours. When it leaves our desk, it leaves our hands and goes to his office, and he reports the bill back within twenty-four hours. Of course, while it is in his hands it does not appear on the file—it is off the file. After it leaves our hands it is taken off the file. When it comes back from the Engrossing Clerk's office, then it is placed upon the file in the order in which it comes back from him. If there are seven or eight bills they are placed upon the file in the order in which they are reported back from him.

Q. Then Mr. Smith takes that bill and puts it in its order in the file? A. Well, he does not take the bill, Frank Brandon has possession of the bills; Mr. Smith makes the notes and keeps a record of the notes.

Q. Who keeps the notes? A. Mr. Smith. It is his business if he does not take the notes at the time to see the report, the report goes into the Journal, and if he does not get his notes right it is his business to refer to the report and see if they are right, and he had made a practice of copying the notes at his desk as I read them off at my desk; then he makes up his file and puts those engrossed bills at the head of the file in the order in which they are reported back from the Engrossing Clerk; then those bills are on the file for final passage.

Q. Then he places those bills upon the file in the order in which they are returned from the Engrossing Clerk? A. Yes, sir.

Q. And they are numbered accordingly? A. Yes, sir.

Q. Does the Engrossing Clerk number these bills, or does Mr. Smith number them as he enters them on the file? A. Well, the bills all have their numbers before they are put on the file.

Q. I mean the file number? A. They are put upon the file in the order in which they are reported.

Q. When the Engrossing Clerk returns the bills, how does he return them, does he return them numbered one, two, three, four, five, etc.? A. No. The numbers are already on the bills, sometimes he may have a very long bill, he may have a bill of twenty-five or thirty pages, he may have a bill of but two pages, he may get the bill of two pages in before he gets the long bill.

Q. He may get the short bill engrossed first? A. Yes, sir; he does that sometimes in order to expedite matters, but generally he reports them back in the order in which he receives them. No bills have been dealt with that way, that I know of, so far this session.

Q. When the bills come back they are entered upon the file and appear in the order in which they come back; they appear upon the file in the same way? A. Yes, sir.

Q. Going at the head of the file? A. Yes, sir; they go at the head of the file unless there happens to be some bill which has been passed upon

the file; if there has been a bill ordered to the third reading, and passed on file, of course that bill would appear ahead of all the others, because they have come another way during this session; we have often passed bills on file.

Q. For your history of your work for the week you simply take a copy of the day's proceedings and enter the history of that bill as it advances? A. Yes, sir.

Q. That is to say, you enter the bill as having been read the first time, or having been introduced and read the second time? A. Yes, sir.

Q. According to the history of the indorsement? A. Yes, sir; and the record book; we have two, the indorsement on the bill and the record book, of course they ought to harmonize, and there are two ways of finding out the exact status of the bill.

E. J. SMITH.

Recalled.

MR. ELLSWORTH: Mr. Smith, we asked the question last night whether you knew of any amendment which had been adopted by the Assembly having been detached from any bill; have you looked into that matter since? Answer—Yes, sir; I have.

Q. Are you ready to state whether such a thing has occurred during this session? A. No, sir; it has not.

Q. No amendments have been detached by any one in the House? A. No, sir.

Q. Then you were mistaken in stating last evening that that had occurred? A. Yes, sir; at the time that I made that statement to some parties a few days ago, I recollected it was myself that tore off some amendments that were not adopted, that were lost that did not go into the Journal at all; was making the amended copy for the printer.

Q. How came you to state to any person that such a thing happened? A. I don't know how I came to do it.

THE CHAIRMAN. Then you were in error when you stated to the committee that amendments to bills had been removed? A. I did not say so to the committee.

Q. You say you stated so to some one else? A. Yes, sir.

MR. ELLSWORTH: Did you state to anybody that these amendments had been detached and sent back in an envelope? A. I do not think I did. I may have done it, but don't believe I did.

Q. How came you to make any such a statement at all if it was not so? A. Well, I don't think I made the statement.

Q. You stated a moment ago that you had stated that some party had detached amendments from the bills, did you not—you just stated so? A. Yes, sir; I did.

Q. How came you to make that statement to any person, if it was not true? A. It was in the course of a general conversation with a party, and I said that I thought that such a thing had taken place, and that I would look into the matter and see, and in looking over some bills to-day at the desk I came across the bill that I thought it was, and it was the bill from which I had torn it off myself.

Q. The bill from which you had torn off yourself? A. Yes, sir; the amendments that were rejected from the House.

Q. Then there was no foundation at all for the statement? A. No, sir; there was not.

Q. Are you able now to give to the committee the name of any member

of the Assembly, other than such names as you have already mentioned, who has offered you any money, or anything of value, or made you any promise of any kind, in consideration of your agreeing to change any bill from its proper place on the file of the Assembly? A. On the twenty-fifth of January the Corporation Committee reported back Assembly Bills Nos. 8, 9, 122, 140, and 10. Reported back No. 8, recommended "Do pass;" No. 9, "Pass as amended;" No. 122, "Pass as amended;" No. 140, "Do pass;" and No. 10, "Pass as amended." These are the notes that I kept opposite Nos. 122 and 140. You can see two check marks, that were put on that day, I suppose?

Q. What did these checks mean? A. These checks were put there by some person to draw my attention to the bill.

Q. Do you know who made them? A. Yes, sir; I will state in one moment. On the next day, the file of January twenty-sixth, on page 5, these two bills appear in their proper order, Nos. 122 and 140. These two bills relate to insurance.

Q. Read the title of each one of these bills. A. No. 122 is an Act to amend Sections 601, 607, 610, 611, 612, 617, 629, and 630 of the Political Code of this State, said sections relative to insurance; No. 140 is an Act to amend Sections 419 and 420 of the Civil Code of the State of California, all of such sections relating to insurance. Both bills were introduced by Mr. Taylor. They appear in their proper place in the file. The day these bills were reported back was the day before this file, the twenty-fifth of January. These two marks were made by some person at the end of my desk, and the request was that one of these should go as far ahead on the file as possible, and the other should go as far down as possible.

Q. Which was to go ahead, and which one was to go down? A. I can't tell which was, because I don't know. I did not follow out the instructions, so I could not tell which one.

THE CHAIRMAN: You do not know whether it was 122 that was to be advanced, or 140? A. No, I could not tell which one, because I did not follow out the instructions.

Q. But one was to go ahead on the file, and the other was to go back? A. Yes; one was to go ahead and the other to go back.

MR. ELLSWORTH: Who made that request? A. It was a request of an attaché of the House, who said that an Assemblyman wanted it done.

Q. Who was the man or attaché who personally made the request of you? A. It was Mr. Shaen, the Engrossing Clerk.

MR. EWING: Well, you may as well tell us who the party was? A. He said it was Mr. Mann.

MR. ELLSWORTH: How did you get the information that it was Mr. Mann that desired to have the change made? A. Mr. Shaen told me so.

Q. Was there any inducement offered you to induce you to change those bills and put them where they did not belong on the file? A. No, sir; there was not.

Q. Simply a request that you should advance one as far as possible and put the other as far down as possible on the file? A. Yes, sir.

MR. EWING: Did he tell you that it was Mr. Mann's desire at the same time he requested you to do it? A. He said, I want you to do that for Mr. Mann.

MR. ELLSWORTH: I don't think it quite proper to go into hearsay testimony.

MR. EWING: Was Mr. Mann interested in either of these bills? A. I don't know, I only remember what I was told.

MR. ELLSWORTH: Were either of these bills to go back or forward? A.

I have the file here and you can examine it. They kept their regular places all the way through.

Q. One of these bills, No. 122, you testified the other night as having been offered a consideration to change its place on the file? A. I was going to correct that, there was an error. It is another bill. I find it on the file. I had a talk with Mr. Mann since about that other bill, after I testified the other night.

Q. You testified the other night, did you not, you were offered \$200 to put the bill as far down as possible, didn't you? A. It was not this bill, it was another bill.

Q. You testified it was Bill No. 122 that you were offered \$200 to put as far down on the file as possible, did you not? A. Yes, sir.

Q. You say that was a mistake, and that it was not that bill? A. Yes, sir.

Q. What bill was it? A. I find that bill on the file of Monday, February fourteenth, it is No. 249 on file. The bill was No. 267, introduced by Mr. Taylor: "An Act relating to life and casualty insurance on the assessment plan, and the conduct of the business of such companies." That is the bill I referred to the other evening.

Q. What is the number of the bill? A. No. 267.

Q. Is that the bill you were offered \$200 to put as far back on the file as possible? A. That is the bill they promised me \$200 to put as far back as possible.

Q. Who was it made that offer? A. It was Mr. Agnew, of San Francisco.

Q. Then, you say when you gave Mr. Agnew's name in connection with Bill 122, you intended to have given it in connection with this Bill No. 267? A. Yes, sir. I see how I came to make that mistake the other night. I suppose I got that bill out, and knew that it was an insurance bill, and I knew nothing about this bill.

MR. ELLSWORTH: Was your testimony except as to the number of that bill incorrect? A. Except as to the number of the bill, no.

Q. How are you able now to identify that as the bill concerning which that offer was made to you? A. By seeing the name of Agnew opposite on my file.

Q. Who wrote the name? A. I wrote it at the time.

Q. Did you write it at the time? A. Yes, sir.

Q. Why did you put that name there? A. The name of any person that draws my attention to any particular bill on file for me to do anything with, I just put the name on file so that I can reply to it, or get any information about it.

Q. Did you have any conversation with W. B. Hunt respecting that bill? A. Not about the bill. I saw Mr. Hunt a day or so afterwards, and he asked me about Mr. Agnew; if Mr. Agnew wanted me to do anything for him, or something like that. I says, "Yes." "Well," he says, "whatever you do for him"—"well," he says, "is all right; you need not be worried about him." That is what Mr. Hunt told me. But he did not do anything about the bill, I don't suppose.

Q. Will you look at Bill No. 211 on file of the same day—Assembly Bill 203—"An Act to amend Section 216 of the Political Code, relating to insurance companies"—and tell us what those marks mean; who made those marks? A. I made those marks.

Q. What were they made there for? A. I think that refers to another bill of the same character, but I will tell you what it must mean.

Q. That is Bill 216, is it not? A. That is Assembly Bill 216, introduced by Mr. Henry.

Q. Henry of Butte? A. Yes, sir; that is a duplicate bill of another. There is no bribery business about this; that means a duplicate bill of another numbered 154.

Q. This is to indicate that it is a duplicate bill? A. Yes, sir; a private memorandum of my own.

Q. Is that all it means? A. Yes; amending some section of the Code; I have that reference for members who come and ask me questions about anything, to answer them; the different authors of bills.

Q. State, if you can, the names of any persons besides those already given, whether members of the Assembly or Senate, or any person not a member of the Legislature, who have made you any offer of money, or anything of value, or any promise of any kind in consideration of your changing the place of any bill on file—changing it from its proper place? A. I will have to look over these bills.

THE CHAIRMAN: As you go along through your files there, please state whatever you see according to your notes, even if it does not relate particularly to the question of Mr. Ellsworth. A. Here is a bill of February seventh, but you have that story of the Glenn County bill where it first happened; there is the mark on there.

Q. What about that bill? A. Well, it was the first day that I was approached to advance it on the file.

MR. EWING: What bill is that?

THE CHAIRMAN: It is the Glenn County bill.

MR. SMITH: The date of it, February seventh.

Q. State about that. A. Well, on the day that this bill was dated I was asked to advance that bill on the file. I said that I would do it, but when I got my file out the next morning, I did not do it. You can look at the next day's file and find that it is in its relative position. The next day, I think, he said "I see that it is not advanced," and that day the offer was made again. But I refused to advance it.

Q. By the same party? A. By the same party; yes, sir.

Q. Who is the party? A. Mr. Falk, Assistant Minute Clerk.

Q. What was the offer? A. There was nothing offered me.

Q. Well, a request? A. A request, yes. He said he would fix it afterwards, that we could make something out of it.

Q. He said he would fix it afterwards, and would make something out of it? A. Yes.

Q. Did he say that the first or second time he asked you to advance it? A. I think it was the second time.

MR. ELLSWORTH: What next about that bill? A. Well, I went to Mr. Hart, and asked Mr. Hart what was his opinion about advancing the bill on file, to see what he thought of it; to see if it was done with his authority, and Mr. Hart refused to have anything to do with it, and I afterwards found out who the parties were who wanted it advanced, through Mr. Falk.

Q. Who were they? A. I don't know their names. I met one of them here, and saw Mr. Falk speaking to them in the lobby here.

Q. Did you state that Mr. Knox requested you to get any information that you could about any improper matter respecting that bill? A. Yes, sir. About that time I gave him information, and the next day Mr. Ryan, myself, and Mr. Frank Brandon saw what took place about cutting the bill out of its proper place on the file. You have that already.

Q. This was a particular bill that was cut out of the file? A. It was a

particular bill, No. 179, "An Act entitled an Act to create the County of Glenn, to establish boundaries thereof, and to provide for its organization," introduced by Mr. Hart.

Q. Was there anything else respecting that bill which you have not already stated to the committee? A. No, sir; I have told all I know about it.

MR. EWING: Have you seen anybody around here lately that Mr. Falk was talking to? Have you seen them around the Legislature lately? A. No, sir.

Q. Only about the time we were considering the Colusa County bill? A. Yes, sir. Here it is again, on the next day's file. It is marked again, to draw my attention to it.

Q. Who marked it? A. I cannot say who marked it.

Q. Is it your own mark? A. No, sir; I make my own mark in this column, always.

Q. Do you know the meaning of it? A. Yes, sir; something to attract my attention, that is all.

MR. ELLSWORTH: Go on, Mr. Smith, now, and if you have anything further to state, state it.

THE CHAIRMAN: Mr. Smith, while you are looking over these notes, if you come to the Telegraph Hill bill, and find any cross opposite it, please state about it. A. Here is this bill which we had reference to last night; that Bulkeley bill; and there is a mark there.

Q. What is the number of the bill? A. No. 295.

Q. Whose handwriting is that in? A. That is my handwriting.

MR. EWING: I suppose you know the meaning of that if you wrote it yourself? A. Yes, sir.

Q. What does it mean? A. That was the time that he drew my attention to the bill, and if you will notice the Journal you will notice that it was reported the day before and went on the Journal and on the file in its proper place at the next publication of the file.

Q. Why did he want to draw your attention to that bill? A. He had been drawing my attention to it all the time. Here is a bill—I don't remember what this could be—there is a mark here; it is Bill 386, entitled "An Act to authorize the Board of Supervisors of the City and County of San Francisco to examine into, adjust, and pay the claim of Thomas Day, of the City and County of San Francisco, for damages done to and interest suffered by certain real property of the said Day, situated on the north side of Harrison Street, between Second and Third Streets, in said city and county, by reason of the modification of the grade of said Second Street, between Howard and Bryant Streets, had and made pursuant to the Act of the Legislature of the State of California, approved March 30, 1868, and entitled 'An Act to authorize the Board of Supervisors of the City and County of San Francisco to modify the grades of certain streets.'" I do not know what that mark can be now.

Q. Is it your mark? A. No, sir; it is not my mark. My mark is always in my column.

Q. MR. ELLSWORTH: Do you recollect any request made to you with regard to the bill? A. That must have been one of those cases that I say I did not pay any attention to at all. They bothered me so much about the file.

Q. You don't recollect anything about it? A. No, sir; I do not.

MR. EWING: You have no particular mark to work by with any of these parties? A. My marks that I can tell about are in my own column.

Q. I mean those parties you have spoken to; you have no particular

marks between yourself and the parties? A. No, sir. I just make a mark or a cross or anything to draw attention. Here are those bills I testified to last night, Assembly Bills 167 and 168, and numbered 240 and 241 on the file of February twelfth: "An Act to appropriate money to pay the deficiency for the State Prison at Folsom." Both titles are alike. A request was made to me to put these on the Special File. They considered in all these cases that they should be placed on Special File, for they told me to do it. I referred them to Mr. Jordan. General McComb was the first man to draw my attention to the fact that they should be on the Special File.

Q. He requested that they should be on the Special File under the rules of the House. A. Yes, sir; under the rules of the House, I testified to that last night.

Q. You did not mention General McComb's name? A. No.

MR. EWING: He merely drew your attention to the fact and stated that they should be on the Special File? A. Yes, sir.

Q. He did not offer you any inducement to put them there? A. No. Here is a bill No. 129, "An Act for the relief of George Nightingale, Michael Ryan, Joseph Rosa, Bridget Davis, Bernard Ward, Ellen Burdett, John Wrixson, Michael O'Neil, Anna Elizabeth Sneider, Eliza Kelleher, William J. Nightingale, Margaret Coogan, Bridget Ryan, Elizabeth Overend, Thomas Dillon, Patrick Garrigan, Bridget F. Houston, Timothy Murphy, James McGeough, Ottis Berge, James Hartford, and Ellen J. McArevey, whose property has been taken and destroyed by blasting and excavating Telegraph Hill in the City and County of San Francisco, for rock and earth, with which to construct the State seawall along the port of San Francisco, in the State of California." There are the marks, but I don't know what they mean.

Q. Neither of them yours? A. No. That bill was read in its regular order Friday, February eleventh, and it was on the file the next day, at the foot of the file under the rule, after being read the first time.

MR. ELLSWORTH: Do you recollect whether any request was ever made to you in reference to that bill? A. No, sir.

Q. To put it on file in its proper place? A. No, sir; I don't know whether it was or not.

Q. You don't recognize either of these marks as being yours? A. No, sir; they are not my marks. Here is the Bulkeley bill, on February fifteenth, on the file marked where he drew my attention to it again.

THE CHAIRMAN: Has it anything new besides what you testified to last night? A. No, sir, just the same. Here are lots of marks of something I do not understand.

Q. Are they your own marks or others? A. No, they are others. I find the mark here in the first column. I guess some newspaper man did that. They used to come and look at my file, for bills that had been acted on and make memorandums.

SENATOR MOFFITT: Did the newspaper men have access to your file? A. They come in here and look at it whenever they have been over in the Senate and have no one to represent them in the Assembly.

Q. Do the newspaper men mark your files? A. I never saw that before; I just got on to it. I did not see that before. Here is a bill; this number on the file is fifty-nine, February seventeenth; it is Senate Bill 192, "An Act appropriating \$80,000 for the establishment of an Industrial Home for the Adult Blind," introduced by Mr. Murphy and referred to the Finance Committee. This bill on the file of that day before it was referred to a committee. I think I went down myself and reported it to Mr. Ryan,

and then he went down to the printer and asked how that bill got on the file, and they never gave any satisfactory information about it, and it was never on the printer's file—never was there. It was only read in the House that morning by title.

Q. You say that has never been on the file? A. Oh, it is on the file since then, but it was not on the file then; it had not been referred to the committee at the time this file was published.

By MR. EWING: It appeared on the file before it was referred to the committee? A. Yes, sir.

Q. How did the printer get it? A. I don't know.

Q. Do you know whether such a bill as that has passed the Senate appropriating that amount of money? A. I don't know whether it appropriated that amount of money or not, but a bill like that, No. 192, came to the Assembly that morning, and this file was published at that time in the morning ready for business, and that morning it was read and referred to some committee; and when I asked the printer about this bill, he could not explain it.

MR. ELLSWORTH: Do you mean to say that that appeared on the printed file of the Assembly when it came in with the Senate messages? A. Yes, sir; when it was read in the Assembly.

Q. What time did the Senate messenger come in with that bill? A. The Senate messages were read in the regular order of business.

MR. EWING: You say it appeared on the printed file the same day it came in from the Senate? A. The same day it was read and referred to the committee.

Q. Did it get into the hands of the committee at all? A. Yes, sir.

Q. Was there a House bill of the same sort? A. I am not positive. I drew your attention to that, and asked you about it, and you stated there were two bills introduced of that kind; something like that you said to me. My attention was first directed to it by Mr. Brandon; he was arranging his bills in the proper order for the file, and then he came to where that bill was.

Q. Did anybody ever call on you and tell you that they wanted that bill put through? A. No, sir; never a soul.

Q. And request that you go and get the proper title from the Senate? A. No, sir; my attention was never called to it.

MR. MOFFITT: Did I ever call your attention to it? I wish you would think over that a little while, and then let us know.

MR. ELLSWORTH: You recollect when you were talking with me at your desk, of my calling your attention to that, and where it came from? A. Yes, sir.

Q. How it came on the file? A. Yes, sir.

Q. Do you recollect, subsequently, Mr. Moffitt standing at your desk and telling you that the amount was wrong, and saying that it was \$65,000 instead of \$80,000? A. Yes, sir; I think we did have that conversation.

Q. Did he tell you that was a mistake, and that it ought not to be \$80,000, but should be the less amount? A. Either you or he did.

Q. You remember having a conversation with each one of us? A. Yes, sir.

Q. You remember that you did have a conversation with me about it? A. Yes, sir.

Q. And you expressed very much surprise to me as to how that bill came to be there? A. Yes, sir; I was surprised at its not being read the first time, and being at the head of the file.

MR. MOFFITT: Have you a Finance Committee in the House? A. No.

MR. ELLSWORTH: It appears that that bill was reported to the Finance Committee, doesn't it? A. Yes, sir.

Q. Is there any such committee in the Assembly? A. None at all.

Q. Have you examined to see whether there is any Assembly bill for that amount of money? A. No, sir; all I looked into, was for the purpose of seeing how it got on file. Here is the message from the Senate—February seventeenth is the date of that file—Senate messages: "Mr. Speaker: I am directed to inform your honorable body that the Senate, on this day, passed Senate Bill No. 192, as amended, 'An Act to establish an Industrial Home of Mechanical Trades for the Adult Blind of the State of California, creating a Board of Directors for the government thereof, and appropriating the sum of \$65,000 for the support of said Home.'" Then we go down to a number lower—Senate Bill No. 192 as amended—"An Act to establish an Industrial Home of Mechanical Trades for the Adult Blind of the State of California, creating a Board of Directors for the government thereof, and appropriating the sum of \$65,000 for the support of said Home. No. 192. Referred to the Committee on Education." And it was on file the same day it was reported; how it got on there the printers never could explain.

Q. This file was printed before the House meets, always? A. Yes, sir.

Q. Of course, before it was possible to receive Senate messages? A. Yes, sir.

THE CHAIRMAN: Then, if it appears on the file of the seventeenth, it must have been put there on the sixteenth, in order to get on this file on the morning of the seventeenth? A. Yes, sir; the printer got this on the night of the sixteenth.

MR. MOFFITT: Mr. Smith, did you have any conversation with me at all about Senate Bill No. 192, "An Act to establish an Industrial Home for the Adult Blind?" A. I have no recollection of any. We might have had one; I don't remember.

Q. Didn't I stand up at your desk, as Mr. Ellsworth has stated, and talk to you about that bill about ten minutes, about a week ago? Mr. Ellsworth must have seen me standing there. A. Well, you might ask me something else. I will refresh my memory on that, Mr. Moffitt; I can't remember just now.

Q. I told you I wanted to know how that bill got on there. I told you that if it came on there all right that the title was wrong, and that you should come over and see me at the other side and get the corrected title from me. A. Yes, sir.

Q. Do you remember the circumstance now? A. Yes, sir.

Q. Then you remember me telling you that that was improperly on the file, in my opinion? A. Yes, sir.

Q. Don't you know that I did? A. Yes, sir; I know you did; I know you did, now. I remember now, as Mr. Moffitt has drawn it to my mind, that we did have a conversation, and he told me that in addition to the title being wrong, it should not be on the file; but I told you that I could not get any satisfaction from the printer in regard to that.

MR. MOFFITT: Yes, you told me that. A. Now here is a bill, No. 205 on the file—Assembly Bill No. 321, an Act to amend section eight of an Act entitled "An Act to establish a State Board of Silk Culture, and provide moneys for the expenses thereof," and approved March 18, 1885, relating to the Secretary of the Board of Silk Culture, and empowering a member of the Board to act as Secretary, and to be paid a salary as such Secretary. I made the statement the other evening that it was a committee clerk that asked me in a very pitiful manner if I could not advance

that bill. I always thought this was the bill. I knew she was interested in the silk business. I thought it was the clerk of that committee; it was not the clerk of that committee; it was another lady entirely; she is present here this evening.

MR. MOFFITT: A lady that asked you? A. Yes, sir; I said it was a clerk; I suppose she was a clerk of the committee; she was a clerk all the time.

MR. ELLSWORTH: Did she complain to you that she thought the bill was below its place on the file? A. Yes, sir; and I showed her that it was not.

Q. Did she insist that it was taken out of its place, and should be advanced to what she claimed was the proper place? A. I said the bill was in its proper place, and explained it very fully. And she says, "Well, can't you put it up there?" I said I could not do it. "Well," she says, "it is too bad," she says, "I would like to have it done." That is the very way she spoke.

Q. Did she complain to you that the bill was below its proper place on the file? A. Yes, sir.

Q. Did she insist that you should put it up where she claimed that it belonged? A. Yes, sir; she did.

Q. Did she make any request of you, so that you should put it where she claimed it belonged? A. Yes, sir; and when I told her that it did not belong there, she said she would like to have it put there.

Q. Did you satisfy her, or do you know whether it was satisfactory to her from your statement that the bill was in its proper place or not? A. I thought I satisfied her that it was in its proper place, because she went away perfectly satisfied.

Q. Did she say she was satisfied, or did you infer that? A. No. If that is so—I forget just what she did say, but I think she went away satisfied, because she did not complain any more.

Q. After she became satisfied that it was in its proper place, do you mean to say that she still insisted that you should advance it? A. No, sir; no. After that she dropped the matter.

Q. Then after she became satisfied that it was in its proper place on the file, she did not press you any further to advance it? A. No. She said that she would like to have it in a place where she thought was its proper place.

Q. Do you mean to give the committee to understand that she insisted on your putting it in a place where she thought it ought to go? A. Yes, sir; she did insist on it; she did not insist on it; she asked me if I would not be kind enough to do it; she did not insist on it, but she asked me if I would not be kind enough to do it.

THE CHAIRMAN: What did she want? A. I could not tell you that now. I see there is a mark here; she may explain that herself. There is a mark opposite, on the opposite place, before Bill 398, amending the election law, by Variel. I think that is about where she thought it ought to go. I have a mark there.

Q. You say that she became convinced that it was in its proper place; that she became convinced that it was in its proper place, but she still requested you to advance it on the file? A. Another time, no.

Q. It was after she became convinced that you had it in its proper place, do you mean to say, that she still asked you to advance it upon the file? A. I don't think she did.

Q. You think she did not come to you after that particular day? A. We had conversations about it afterwards, but not about advancing the bill on the file.

MR. ELLSWORTH: Then you do not understand that she tried to get you to do anything which she supposed to be wrong? A. No, sir, I don't think she did.

Q. Then your testimony last night was rather misleading? A. Well now, I don't want you to think I am here as a prosecutor; I am here simply as a witness; the papers have been giving it to me; they have gone into my private family affairs, and I want to give the testimony in my own way. I say that this lady came to me and told me that that bill was not in its proper place; I convinced her that it was in its right place, and then she wanted to know if I would not be kind enough to put it where she wanted it. I want it to be understood that I am no prosecutor here; I am here simply as a witness.

Q. Was she fairly satisfied that it was in its proper place after you explained it? A. Yes, sir; and then she wanted to know if I would not be kind enough to do that; she did not order me to do it. If I am not mistaken, we had a conversation a few days afterwards, when I was putting the file upon the board, and she said she was very much surprised that the bill was again away down to the bottom of the file.

Q. She did not say in case you did there would be any consideration? A. She never said a word about that.

Q. She did not intimate that way at all? A. No.

EX-SENATOR CROSS: Is this lady, Mrs. Rienzi, the lady you refer to? A. Yes, sir; she is the lady.

Q. In the conversation with Mrs. Rienzi, didn't she insist that under the rules of the House, its being an appropriation bill, it was entitled to go on the Special File? A. Yes, sir; she did.

MR. ELLSWORTH: Then, what she asked you was, to put it on the Special File, and asked you if it ought not to go on the Special File? A. Yes, sir; she asked me that.

THE CHAIRMAN: Does your mark indicate that it should be on the Special File? A. No; if any bill like that came up and it was claimed that it should be on the Special File, I would always ask Mr. Jordan or Mr. Ryan about it.

Q. Does your mark mean that? A. No; I think that just indicates the place.

Q. Your marks never appear on the Special File at all? No; they would never be on the Special File. Whenever I refer to the Special File I make the initials S. F.

Q. Did she insist that it should be placed on the Special File? A. I say, to my mind I think she said it belonged on the Special File.

Q. Was that what she asked you to do? A. That was the meaning of the conversation.

Q. Did she ask you to put it anywhere else except on the Special File? A. Just as I said before, she asked if I could not put it on the file as far as I could. I have got the idea that that is it.

MR. EWING: What is your opinion about it from your experience of the rules in regard to the Special File as to ordering that bill there? A. Well, I will tell you, Mr. Ewing, it is just as I said the other night in a general way; there have been so many people asked me to fix the bills in the Assembly, that I cannot remember.

Q. My question is, can you state from your experience in these matters whether that bill belonged on the Special File? A. No, sir; Mr. Jordan told me it did not.

THE CHAIRMAN: You stated there was another mark there; what do you refer to? A. There is a mark there; one of your bills, Mr. Ellsworth; I put that bill on the Special File; it is a charter bill, and there is a mark



which I do not understand; Assembly Bill 84, but I do not know what that can be.

Q. That is not your own mark? A. No, sir; that is not my own mark. It is number 247 on the file of February twenty-seventh.

Q. Who introduced the bill? A. Mr. Searey: "An Act to regulate the employment of gripmen, conductors, and drivers of street railways, to provide for granting licenses to competent persons, and to provide further safeguards to life and property in the manner of operating such railways."

MR. ELLSWORTH: You stated that one of these bills were mine, having a mark opposite it? A. That is the charter bill.

Q. You intimated that it being a charter bill that it belonged on the Special File? A. Yes, sir; it was marked, and I asked Mr. Jordan whether I should put it on the Special File or not.

MR. EWING: You say that you have been approached, Mr. Smith, by different members of the House, to have their bills put on the Special File. Did some of them? A. Yes, sir.

Q. How many, do you think; about how many members? A. That is what I am trying to get at by going over these files, to see which ones they are. I have got the files here of the eighteenth of February.

MR. MOFFITT: Is that Searey bill there? A. It is No. 306, on the file of the seventeenth.

Q. The one in relation to gripmen? A. Oh, it is number 247 on the file, here it is. It is number 233 on the next day's file.

Q. What does the mark opposite the bill on the file of the seventeenth indicate, do you know? A. I do not know.

Q. I would like to ask you if you have been in the habit of dropping bills off the file entirely? A. No, sir.

Q. Anybody ever ask you to do that? A. Yes, sir; I have been asked to do it.

Q. Were you ever asked in connection with that bill? A. Yes, sir; I might have been asked about that bill.

Q. Did you ever drop it? A. No, sir.

Q. Was it ever dropped on file? A. No, sir.

Q. You object to stating who it was? Who asked you to drop that bill? A. I could not answer you; I do not know.

Q. I never asked you? A. I know you never did.

Q. I never asked you to take a bill entirely off the file? A. No, sir.

Q. What I mean by dropping a bill, is dropping it entirely off the file; I never asked you to do that? A. No, sir. I have not advanced a bill since I have been here this session from the beginning up to the present day. Either dropping a bill or putting it ahead.

Q. Did any one ask you to take a bill entirely off the file; to wipe it out entirely? A. I think I did have a conversation with somebody, but I do not know who it is—there was a bill—

Q. I wish you would try to think what that mark opposite that "gripman" bill means? A. It might have been as you say, to drop the bill off the file.

Q. Well, then, some one has asked you to drop the bill off the file, have they? A. Yes, sir.

MR. ELLSWORTH: Have you a recollection of any one that asked you to drop that bill off the file? A. I do not know if that is the particular one.

Q. Is that your mark, Mr. Smith? A. No, sir, that is not my mark; my mark is always in my own column.

Q. Do you know who made the mark? A. No, sir. When any one asks me about anything, I usually make a mark of that kind.

Q. Did any one ever ask you to do anything with that bill, either to drop, or advance it, or put it back on the file? A. Yes, sir; it must have been so, because that mark is there; but what it means I do not know.

Q. If there is a mark opposite the bill does it necessarily indicate that you were requested to do anything improper with it? A. Yes, sir; a mark like that does.

SENATOR MOFFITT: It means something? A. Yes, sir.

MR. EWING: Then a correct mark means a correct matter? A. Yes, sir; because anything that is written on the bill that is correct is written out in the bill always.

THE CHAIRMAN: And if there is anything corrected there is simply a mark put there to call attention to it? A. Yes, sir.

Q. Now, Mr. Smith, it necessarily relates to something corrected. You stated awhile ago that these marks were put there to call your attention to it? A. Yes, sir; to call my attention to something about the bill.

Q. Is it necessarily something corrupt? Suppose a member of the House should come here and tell you that a certain bill belonged on the Special File? A. Yes.

Q. And requested you to ask Mr. Jordan to put it on? A. Yes.

Q. You would put a mark there? A. Yes; I would put a mark in my column.

Q. Would that indicate there was anything corrupt about it? A. That would mean that something was to be investigated.

Q. You would be liable to forget what that mark meant, would you not? A. I would then go and ask the member—the author of the bill—and see what he wanted me to do. I have come to you, Mr. Ewing, and asked you in regard to it, and asked you what you meant. Going over these files, I find two resolutions. I find two marks there.

Q. What kind of marks did you make? A. I think I put his name opposite to it.

Q. Well, that did not indicate there was anything corrupt about it, did it? A. No, sir; his committee clerk had made a wrong report.

Q. Then the mark opposite the bill does not necessarily indicate that there is anything corrupt about it? A. No, sir; it was put there to draw my attention to investigate it.

THE CHAIRMAN: You refer to the mistake made by our committee clerk in making a wrong report? A. Yes.

MR. EWING: Then my question was a correct one—that the corrected marks were in connection with corrected matter? A. These marks are to draw my attention; to investigate; to see what it is. Here comes the newspaper men again.

MR. EWING: Who put those marks there? A. I suppose those newspaper men came from the Senate to take off the proceedings for that day.

MR. ELLSWORTH: You suppose? Do you know whether they did or not, or is that simply guess work? A. It is not guess work at all.

Q. What I mean is, did you make the marks, or are you merely supposing that they were made by reporters? Do you know anything about it, or is it your supposition? A. It is my supposition that the newspaper men made them.

MR. EWING: Are there any bills marked by these newspaper men that you think they are interested in? A. No, there is not; they are ordered on the Special File; there is a check opposite.

MR. MOFFITT: Mr. Smith, have these bills been withdrawn from the Assembly File? A. Yes.

Q. What do you do when a bill has been withdrawn? A. I put it in the dead box and strike it off the file.

Q. You do that yourself? A. No, sir; I strike it off the file and Mr. Brandon puts it in the dead box.

Q. Now, you referred to that Searey bill a few moments ago, as being away down on the file; how far down was it; nobody makes up this file but you, Mr. Smith? A. No, sir, no one touches the file but me.

Q. You know it is absolutely correct? A. Yes, sir; I know it is absolutely correct.

Q. No bills have been shoved down or up since you have been there? A. No, sir.

Q. That you will swear to? A. Yes, sir.

Q. Now, look at that file and see if you can find that Searey bill? A. You know yesterday, or day before yesterday, there were a great many bills read out of order, and they came down to the bottom again. One hundred and fifty-three bills went to the bottom of the file Saturday night.

Q. Has it been read the first time there? A. No, sir; it is now read the first time. You will find that it is number 247 on the file, February seventeenth, and you will find it number 233 on the file of the sixteenth.

Q. Has it been read yet? A. No, sir; I just want to follow this up. These newspaper men have gone so hotly after me that I want them to know this. We will take the file of the seventeenth. [The witness here took the file and compared the different stages of the bill, and found it correct.] I have gone through these bills, but I have not finished the last one. Well, this is yesterday's file, and no one came around me yesterday at all.

MR. RYAN: Just let me ask a few questions, please, so as to get it before the committee. These are the notes which you make up your file from? A. Yes, sir.

Q. You keep those notes during the course of the day's proceedings? A. Yes, sir.

Q. If you should have any doubt as to any note you have made, you can correct it by comparing with the Journal or the notes that I keep, can you not? A. Yes, sir.

Q. From these notes you make up your file that you present to the printer? A. Yes, sir.

Q. And the printed file is the file that is made up from the one you send to the printer? A. Yes, sir.

Q. Not from those? A. No, sir; I make a copy for the printer.

Q. Do you send that to the printer every night? And it is your business to compare it and see that it is correct? A. Yes, sir.

Q. And to check it off? A. Yes, sir. I always get one of the clerks to help me.

Q. So that if any one tampers with the file during the daytime, cuts it up or takes anything out of it, by comparing it in the evening, you can find out whether anything has been done or not, of that kind? A. Yes, sir.

Q. Then I always instruct you to make that comparison every night before you send it to the printer? A. Yes, sir; always.

MR. ELLSWORTH: Has it been your habit to make that comparison? A. Yes; always.

MR. RYAN: So that if anybody had tampered with it, you would be able to discover it, would you not? A. Yes, sir.

MR. ELLSWORTH: Mr. Smith, have you given any of the names of persons so far as you can recollect them or discovered them, who have requested you to take any bill out of its proper place on file? A. Yes, sir.

Q. Have you given the names of persons who have offered you money or offered valuable consideration or made you any promise as an inducement for you to make any change in the file? A. Yes, sir.

Q. You stated, did you not, on the first evening of your examination, that you had been offered money, or some consideration, or value of some sort, or some promise was made you, nearly every day during this session, to take some bill out of its proper place on file? A. I stated I was approached every day—in fact, two or three times a day—by members; but I don't suppose I was offered money on all occasions.

Q. Didn't you say you were offered money for such a purpose nearly every day, and sometimes two or three times a day—on an average of about once a day for the entire session? A. I did not say I was offered money. I stated I was approached, but was not offered money on all occasions. I was not offered money; but I was promised, and I was approached about the file most every day.

Q. Didn't you say you were offered money, or some consideration of value, nearly every day, or an average of about every day during the session? A. I don't think I did; no, sir.

Q. Well, if you did make that statement, was it true, or was it a mistake on your part? A. If I made that statement; but I don't think I made that statement, because I did not intend to make such a statement. The statement that I made, or suppose that I made, was, that I had been approached every day about the file, and asked to push bills forward or keep them back.

Q. Then, if you did state that you had been offered money every day, you desire to correct that statement? A. Yes, sir; I do.

MR. SHAEN: Did you state in your testimony that there was an Assembly bill in regard to the appropriation of \$50,000 for the laying of pavement walks around the Capitol way, that I was interested in? Did you so state that to the committee? A. I saw it in the paper. I did not state that.

Q. You did not state that? A. No, sir.

Q. Then it isn't true, even if it does appear in the papers that you stated that I was? A. I did not state it. What I did state to the committee was, that there was a bill introduced in the Assembly to complete the walks around the State Capitol grounds; I did not state that any amount of money was appropriated, and it was not \$50,000; the amount is \$5,000.

Q. Did you state before the committee that I had any interest in that bill? A. I did; yes, sir.

Q. Did I have any interest in that bill? A. I think you did; yes, sir.

Q. What did I ever say to you about it? A. A friend of mine came to me and asked me what the chances were for the bill to get through this session.

Q. Name the man. Who was this friend of yours? A. I will name him when the time comes. He asked me what the chances were to get the bill through to complete the sidewalks around the driveway around the Capitol grounds, and I told him it was pretty late in the session, but he might be able to get it through. Another party drew the bill at his request, and he handed me the bill to hand to the Chairman of the Committee on Public Buildings and Grounds. The Chairman of that committee was absent, and I took it to Mr. Taylor, and presented it to Mr. Taylor, and asked him if he would not introduce it, as Mr. Carroll, the Chairman of that committee, was absent, and Mr. Taylor introduced the bill. I had a conversation with you about the bill, and you said whatever you got out of it, I would get a share of it; that was what I testified to the other night.

Q. Did I ever ask you to shove the bill on the file, or anything of the kind? A. The bill was not on the file.

Q. Did you ever write a letter to a man named Goodman, Superintendent of the Artificial Stone Pavement Company? A. I was thinking in the course of my lifetime that I have written him about twenty-seven.

Q. Did you ever, in the period of the last sixty days, write a letter to Mr. Goodman? A. I think so.

Q. Have you or have you not? A. I think I have.

Q. Have you sent him any telegrams? A. I think I have.

Q. Have you sent him any telegrams in relation to this bill? A. I think I have.

Q. Did you have a conversation with Mr. Goodman the other day when he said to you, "Ed, what have you said?" and you said, "I don't know what I have said; I have been confused." A. I think I have; I had a conversation with him, but I don't think I said that to him.

MR. SHAEN: Mr. Chairman, I would ask that Mr. Goodman be subpoenaed to bring the letters and telegrams sent to him by Mr. Smith. His address is Geo. Goodman, 404 Montgomery Street, San Francisco.

MR. SHAEN: Mr. Smith, did not you come to me and state that Mr. Goodman wanted you to introduce a bill in regard to artificial pavement, and that you would attend to the shoving of it on the file, and when it came to me for engrossment that I should engross it, and report immediately? A. If you will ask me the question in a legal way, I will answer it.

Q. Did you not tell me that you would take charge of it, and that when it would come to me I should engross it at once? A. It is your duty to do it without my telling you to.

Q. I understand my duties. Didn't you tell me that? A. It is your duty to do it.

Q. Didn't you have the bill drawn? A. No, sir; I did not have the bill drawn.

Q. Didn't you go to a certain party and have it drawn? A. No, sir; I did not.

Q. Who did have it drawn, Mr. Goodman? A. Yes, sir.

Q. Then it was handed to you to have it introduced? A. Yes, it was. I stated that before.

Q. In regard to these bills to which you refer to about Mr. Mann, didn't I tell you simply that the moment that they were ready for engrossment you should take and send them right to me? A. You asked me to advance one on the file, as a special favor to Mr. Mann, and the other to drop down. You went right down to Mr. Mann's seat and spoke to him, and the other men in the House saw you do it.

Q. Then I didn't tell you to send them to me as soon as they were ready for engrossing? Haven't I come to your place and told you to send the bills to me as soon as they were ready? A. Yes; in fact, you came to my desk and you helped yourself to the bills.

Q. I always gave you a receipt for the bills? A. Yes, I am just telling you that.

Q. That was my duty, I suppose? A. I just told you.

MR. FALK: Relative to this bill that you speak of in regard to Mr. Goodman. Was my name mentioned in that matter? Did you mention my name in that, Mr. Smith? I see by the papers that you did? A. I did not, I think, Ray.

[Mr. Ellsworth at this point read from his memorandum the portions of the testimony of E. J. Smith, relative to Mr. Falk.]

THE CHAIRMAN: In that testimony that Mr. Ellsworth has just read, you said that Mr. Higgins wanted you to destroy that sheet of the file, and in following up your testimony, you say that you told Falk that Mr. Ellsworth knew you had that sheet of the file. Do I understand you to say now, or did you say that Mr. Falk ever made a request in regard to destroying or making away with that part of the file? A. Yes, sir; last Friday, last Friday night, Mr. Falk asked me if I could substitute a page for the page in the file that was mutilated.

Q. And it is in connection with this last part that you answer? A. Yes, sir; the next part happened afterwards, the next, I think that was Saturday after the committee had been appointed, he asked me the same question and wanted to look at the file. I took him up here to the desk and took out the file, and showed it to him, and I put it back again.

Q. Tell us, as nearly as you can, what Mr. Falk asked you to do at that time. A. Well, that Saturday he came to me and asked me if I had that file yet. I said yes. It was at the noon hour—it was Friday—and we came up to the desk and I unlocked the locker and I took out the file and showed him the mutilated page, and we went outside and he wanted to know if I could not destroy it, and I said I would not destroy that file without consulting Frank Ryan; and I consulted Mr. Ryan, and he said no, that the file was record, and for me to keep it. I would like if you would recall Mr. Ryan and ask him that.

MR. FALK: You testified last night about the Goodman bill, about the sidewalk pavement bill, and you testified here that I spoke to you about that Goodman bill; did I ever mention that bill in any way at all? A. I don't remember that, I think—

Q. Did I ever mention it to you in any way whatsoever? A. You did.

Q. Now, regarding the other bill; you say I approached you and asked you to raise that bill on the file two or three times? A. Two times, that I know of.

Q. Didn't you come to me and state that a party had been to you and you asked him if there was any money in it, and if I knew anything about it? A. No; most emphatically, no; I did not do it. You came to me; you even took my file, and took the sheets and put them out of their proper place. The next morning you jawed me for not doing it. I told you I would not do it, and I told you you would have to go to Frank Ryan. I told Frank Ryan the same thing. You have asked me the question, and I want to answer you. I do it not to mislead now.

Q. Did I ever state to you that there was any money in any proposition? Did I ever offer you any money? A. No, sir; I did not swear that you ever offered me any money.

Q. Did I ever state that there was any money in any proposition here? A. You stated that if that bill, 179, was advanced on the file, you would make some money out of it, and you would divide with me. You stated that in so many words. The next day you jawed me because I did not do it. You said I was not letting the boys make a cent. Those were the very words you used.

SENATOR MOFFITT: Now about that Searey bill—you remember? A. Yes, sir.

Q. Do you know Frank M. Strong? A. I am personally acquainted with him—yes, sir.

Q. You know who he is? A. Yes, sir.

Q. You know a man named Mr. Carey? A. No; what is his business?

Q. He is a Sacramento man. A. No.

Q. He is a railroad man. A. No, I don't know him at all.

Q. Well, did you ever speak to Frank M. Stone, or did he ever speak to you about that Searey bill? A. The last conversation I ever had with Stone, was the night of the Republican Convention, six weeks before election, and I have not spoken to him from that day to this.

Q. Did you ever write to him? A. No, sir; I never wrote a letter to him.

Q. Did he ever write to you? A. No, sir.

Q. You never have spoken to Mr. Carey, of Sacramento? A. I don't know Mr. Carey; I don't know who he is.

Q. Did you ever speak to anybody about the Searey bill? A. No, sir; only as it was in that connection of marking that page. I cannot bring that to my recollection.

Q. You are sure it was Mr. Carey? A. No, sir.

Q. You are sure it was not Frank M. Stone? A. No, sir; it was not.

MR. ELLSWORTH: You say you don't know Mr. Carey? A. No, sir; I don't know that man at all; I never saw him.

Q. Might it not have been Mr. Carey that came to you and spoke to you at the time that mark was made? A. It might have been, but I don't know who the man was.

MR. MOFFITT: If you saw the man, you would remember him, in connection with that mark? A. If I would see the man I could place where I had seen him before.

Q. If you would see the man that came to you at the time that mark was, you would remember him? A. I think I would, sir.

MR. EWING: Could you raise or lower a bill on the file without the knowledge of the other clerks at the desk, in case you wished to do so? For any person or, for your own personal convenience, could you raise or lower a bill without the knowledge of the other clerks at the desk? A. Well, I think if I made up the file alone I could do it; but according to the system that we have been following I could not have done it.

Q. You think they would detect it? A. Yes, sir; they would.

THE CHAIRMAN: Mr. Smith, in this evening's "Post," of San Francisco, February twenty-second, appeared the telegram signed by E. J. Smith; will you look at that and tell us whether you ever sent such a telegram? It is dated Sacramento, without date? A. This being a newspaper item in connection with a whole half column of other stuff, without giving my reasons, I do not wish to answer the question at this time.

Q. I do not wish to connect your family affairs in this matter. A. There is a whole lot of stuff here, from top to bottom, with that telegram.

Q. Let me ask you another question, did that telegram relate to your private affairs? A. Yes, it did.

Q. And had nothing to do with the examination before this committee? A. No, sir.

MR. ELLSWORTH: You say it refers to your private affairs? A. Not my family affairs, my private affairs; I have no family affairs now.

Q. I mean your individual affairs? A. Yes, sir.

Q. "You deceived me in that matter"—state whether that had reference to the bill known as the Aurelia Pfeiffer bill? In the first place, did you send to Mr. Bulkeley such a telegram or send him a telegram of similar character? A. I sent Mr. Bulkeley a telegram; I could not tell whether this was the one or not.

Q. Was it of similar import to this printed here in this paper? you certainly must remember whether you sent him a telegram of that kind or of a similar kind. Mr. Smith, did you send to Mr. Bulkeley a telegram such as is printed here in the paper in this evening's "Post," or one of like

import? A. I don't think I sent a telegram like this; I sent him a telegram, and it was only last week that I sent him one.

Q. Did it have reference to the bill known as the Pfeiffer claim bill which Mr. Bulkeley is interested in advocating here in the Assembly; did that telegram have reference to that bill which you say you sent him? A. Yes, it did.

Q. Did you say in that telegram in substance: "unless you send me \$20 on receipt of this, I will hurt your bill?" A. That is something I don't think I did say. I don't think I said a word about money to him.

Q. Did you say anything in that telegram to him about hurting that bill? A. I would rather see the telegram before I answer; I know what kind of a man Mr. Bulkeley is, and therefore I do not wish to answer until I see the telegram.

Q. What office did you send that telegram from? A. From the Western Union telegraph office.

Q. Don't you remember the purport of that telegram, Mr. Smith? You sent it last week, and it had reference, you say, to the bill known as the Pfeiffer claim bill. Don't you remember the purport of it? Did you keep a copy of it? A. No, sir. I must have written it here at the desk; the telegram must have gone from this office here in the building.

Q. Will you give an order for the Chairman of this committee on the Western Union Telegraph Company to exhibit that telegram to the Chairman, or give him a copy of it? A. I will go to the telegraph office with the Chairman of the committee and see the telegram.

THE CHAIRMAN: Mr. Smith, will you go down with me in the morning and obtain a copy of the telegram at the Western Union telegraph office? A. Yes, sir, I will.

MR. FALK: One question more. When I asked you if you would let me look at this file the other day, didn't I state to you—the only time that I had spoken to you since the investigation was ordered—to bring the file before the committee, and state the truth? Didn't I state that to you, sir? A. You have asked a leading question, and I will answer you in a leading way. You asked me to substitute another page for the page that was mutilated. I told you that I would do it. I immediately went to Mr. Ryan, who was down in the cellar, taking lunch, and I went down and communicated the circumstances to Mr. Ryan. I says to Mr. Ryan, Mr. Falk wants me to change the file, in that way; and he says, we can't do it; but we will make it as easy on him as we can. You know yourself you asked me to do it.

ASSEMBLYMAN COHEN: According to the reports of the paper—I don't know any other way only what I saw in the paper—there was a statement to this effect: That Mr. Cohen went to Mr. Smith with somebody, and said that it would be an accommodation if he could advance a bill on file, according to the statement of the papers which says that two young men were brought up to Mr. Smith—

THE CHAIRMAN: I didn't understand Mr. Smith to make any statement here in which your name was brought in connection to any bill that reflected upon you.

MR. ELLSWORTH: One was named Dobbin; and who was the other man? A. Guttstadt was the other man.

Q. Do you remember what day that was on? A. It was the day we had the argument about the substitute; I forget now.

Q. You say he came up to the desk? A. No, sir. Somebody came and told me I was wanted at your desk (Mr. Cohen's); I went over, and you and Dobbin were sitting there, and Dobbin says: "Ed., I want you to put

that bill up on the file as far as you can, or get it ahead. You say that's all right, Ed.; you do it for me." These were the words.

Q. You don't know what day it was on? A. It was on the day that the substitute was adopted; Guttstadt was not there. He was the one that told me that you wanted me over there.

Q. According to the papers you stated that I came to you? A. Oh, the "Post" is all wrong there; is all wrong from head to foot; there is not a particle of truth in it.

RAY G. FALK.

Sworn.

THE WITNESS: Do you wish to question me, or do you wish me to make a statement?

MR. ELLSWORTH: Mr. Falk, you can proceed and make a statement in regard to this matter. State as a first matter in regard to the Colusa County bill, if you desire to do so. A. The first recollection I have in regard to the Colusa County bill, Mr. Smith came to me, I think it was on the fifth or sixth of the month—some time in the first part of this month—and he said to me that somebody had spoken to him about the Colusa County bill. He says, "Do you know, or have you heard, if there is any money in that bill?" I says, "I have a great many rumors, but I don't know anything about it;" that is about all the conversation we had that day. The next day he said to me that he had done nothing with the bill. He asked me if I had found out anything, and I told him that I had not. Then there wasn't a word said until the day—I think it was the eighth; there wasn't anything at all doing here. Mr. Ryan, Mr. Saulsbury, Mr. Marston, and Mr. Smith were not around here in their places. Mr. Brandon and myself were sitting at the desk, and there was a long argument going on. I was walking up and down. I came over to the corner of the desk, and the file that is made up every day was lying there—and before I go further I want to say, the night before Mr. Hart and myself had had some conversation regarding this Colusa County bill. Mr. Hart was very indignant about the article that appeared in the Colusa "Sun." He said to me that he was going to rise to a question of privilege the next day, and that he also thought that the article might have hurt his bill, and he said that he might get up and try to take the bill up out of order. He also said that he had a long petition from the people that lived there, and I remarked to him it would do his bill a great deal of good if he took that petition—he said it had a great many names on it (eight hundred or nine hundred)—if he would take and get a couple of boys to go round with it and show it to everybody. He said that he would. The next morning he rose to a question of privilege, but he did not take up this bill. Now, I will go back to where I was at this counter. I was standing there, and there was nothing at all doing, and the file was lying there; I was looking over it. I had my knife in my hand; no eraser. I took the file—you have seen it. I took and slit the bill—made two slits across it. I did not lift the paper off the slip—did not lift it off at all. Mr. Ryan came up about that time, and he says: "Ray, what are you doing?" I made the remark to him: I said Mr. Hart stated to me that he expected to take up his bill out of order, but he has not done so as yet. Mr. Ryan says: "You had better not touch the file; only Mr. Smith and myself have anything to do with the file," and I sat down. I never had anything more to do with it, sir, than just that. Mr. Hart told me he was going to take it up, and I expected that he would. I had no intention in God's world of

doing anything wrong with that file, or taking that bill and placing it any place on the file, because it could not have been of any object to me in the world. I have seen Mr. Hart since, and I suppose he will corroborate my statement. There could have been no object in causing me to place that bill any place else. I never touched the file nor had anything to do with it before, and I would not have touched it then if there had been anything doing; but, as there was nothing going on, it was lying on the end of the counter, there.

MR. ELLSWORTH: Mr. Falk, at this time was the mucilage dry? A. No, sir; the file was just made up. The file was made by cutting from the printed file portions of the page and pasting it on the file with mucilage.

Q. Was that mucilage dry? A. I don't think it was. I had an old dull knife in my hands, and I used that.

Q. You cut that and made a slit in the file? A. Yes, sir.

Q. Did you make two slits? A. Yes, sir; I made two slits.

Q. Is one on the top of the Colusa County bill and the other at the bottom? A. Yes, sir.

Q. Did you take that slip off from the paper? A. No, sir; I did not.

Q. Did you touch the mucilage? A. No, sir.

Q. Never removed it at all? A. Never removed it at all. I never touched the mucilage bottle, the eraser, mucilage brush, or anything of the kind.

Q. What did you do that for; what did you make that cut for? A. Well, as I told you, I thought Mr. Hart was going to take up this bill, and I just happened to be there looking at the file that day.

Q. What did he make these slits there for? And did you do the cutting? A. Well, I thought he was going to take up this bill, and I happened to be there, and Mr. Smith not being there—nobody—Mr. Smith was out for fifteen or twenty minutes—more than that.

Q. Suppose he was, did you take it for granted that in case Mr. Hart made a motion to take that bill up out of order, that the Assembly would pass such a motion, and allow him to take it up? A. Yes, sir.

Q. You assumed, as a matter of course, that that would be done? A. I did, sir; because Mr. Hart told me he thought there were votes enough to take it up.

Q. Was it your business to touch the file? A. No, sir; it was not. It might have been if there were no other clerks there.

Q. Mr. Falk, suppose the motion had been made and carried, would you have done it? A. I think I would have done it.

Q. Would it then have been necessary to cut that leaf out? A. Yes, sir; to place it where it belongs.

Q. Would not the proper thing to have been done to have been merely to make an entry by the Minute Clerk, or by the party keeping the file, Mr. Smith, or you, if you were keeping the file, if such a motion had been made and carried? A. No, sir; the bill would have been placed in its right place on the file.

Q. In the first place, there would have been an entry somewhere, showing that the Assembly had passed such a motion? A. Yes, on the minutes.

Q. Well, was it your business to make that entry? A. Yes, sir.

Q. Was it your business to make it on Mr. Smith's file?

Q. Then what did you touch that file at all for? A. Well, I just happened there, and that file was lying there; there had been a great many mistakes in the file, and Mr. Jordan had called my attention three or four times to that. He always taxes me, and I told him two or three times, I

says, Mr. Jordan, I have nothing to do with the file. He says, there are always a great many mistakes here.

Q. This paper was in what we call the file, was it? A. Yes, sir.

Q. It was a paper being prepared for the printer, for the printer's use, to be on file the next day, was it not? A. Yes, sir.

Q. It was Mr. Smith's business to prepare that for the printer, was it not? A. It was, sir.

Q. Now, if Mr. Smith was absent, and there was no action to be taken on the bill, would it have been necessary at all, until it came to the close of the day, to show what action had been taken on the bill? A. If he was absent I might have tried to fix up the bill on the file at the time.

Q. What time of day was this? A. It was in the afternoon; I believe it was four o'clock, or so.

Q. Did you ever have anything to do about making up the file before? A. No, sir; never.

Q. Don't you know that Mr. Smith had just left his desk a moment before that? A. No, sir. Mr. Smith had been gone fifteen or twenty minutes before that.

Q. Whenever a motion is made out of order and a bill gets taken up out of order there is an entry by the Minute Clerk? A. Yes, sir.

Q. Is that all the connection you would have with it? A. I think that is all. Yes, sir.

Q. Didn't you know that you had no right to touch that file? A. No, sir.

Q. Don't you know that you have not? A. No, sir.

Q. You never had been instructed not to touch it? A. No.

Q. You knew that it was Mr. Smith's business to keep that file, did you not? A. Yes, sir.

Q. Had Mr. Hart risen to a question of privilege when you did that? A. He had risen in the morning; he told me he was going to rise to a question of privilege.

Q. He told you in the morning he was going to take this bill up out of order? A. He intended to rise to a question of privilege, and also to take this bill up out of order.

Q. That was the afternoon before that he told you that? A. Yes, sir; he only rose to a question of privilege, though.

Q. Now, had you had subsequent conversations with Mr. Hart? A. No, sir; I had not seen him.

Q. Then as Mr. Hart had not made the motion in the morning, what right had you to suppose at three or four o'clock in the afternoon that that bill was to be taken up out of order that day? A. I thought that he was going to do it.

Q. You thought that he was going to do it, although he had not done it up to that time? A. Yes, sir.

Q. And you had not seen him to have any further conversation with him about it? A. I had not seen him at all, excepting in his seat.

Q. Did you have that minute paper that you cut out of its place at all? A. No, sir.

Q. Not at all? A. No.

Q. Nor a portion of the minute page above or below it? A. No, sir.

Q. You did not move it? A. I did not move it, sir.

THE CHAIRMAN: Mr. Falk, have you ever had, during this session, anything to do with making up the file? A. No, sir; I looked over it once and awhile, that's all, while it was being made up.

Q. This is the only time that you ever attempted to change the file for the printer? A. Yes, sir.

Q. Or change it any place after Mr. Smith had placed it on the file? A. It was the only time that I have ever touched the file, I believe; I have looked at it, but don't think have ever touched it before, except to look over Smith's shoulder.

Q. You never attempted to cut out a bill or bills during this session from the file in this manner? A. Never, sir.

Q. Well, why did you do it particularly on that day when there was no action being taken in the House on that bill? A. Well, I answered that before, that I thought there would be; and, I perhaps took a little more interest in that bill than I should; I had taken some little interest in its passage.

Q. You stated that Mr. Hart rose to a question of privilege in the morning? A. Yes, sir.

Q. And that this cutting took place in the afternoon? A. Yes, sir.

Q. What was there about that bill that so particularly in the afternoon when other business was being transacted in the House that you should cut that particular bill on the file? A. There was nothing but a long discussion going on. Mr. Hart told me that he intended that day to take up that bill.

Q. Was that discussion in relation to this particular bill? A. No, sir; it was not.

Q. And then there was nothing going on in the House calling your attention to this particular bill at that time? A. Nothing; only I happened to be looking over the file and I happened to see the bill.

Q. Have you at any time during this session cut any of the pages on that file and placed them out of their order? A. I don't think I have touched the file, except that day; I am positive of it.

Q. Did you see the testimony of Mr. Smith, in which he stated that you took three or four pages and lifted them off? A. Yes, sir; I did.

Q. Did you touch those pages? A. I never touched them; I never cut them.

Q. Do you know anybody that did? A. I do not.

Q. Do you know whether this Colusa County bill was among those pages? A. I don't know, sir; I never looked at the file to know except that day. I don't know; I don't know the first thing about the file except on that day.

Q. You say that this was the only time that you ever had anything to do with the file during the session? A. The only time, sir.

MR. ELLSWORTH: Why did you take such an interest in that bill, Mr. Falk? A. I had a friend or two of mine from the city who spoke to me in regard to it; stated that it would be of great interest to them to see the bill go through.

Q. Was there any money or any other consideration offered you, or any promise made to you for any assistance that you might render in procuring the passage of the bill? A. Never a cent, sir; no assistance and no promise of any kind.

Q. Is that all you desire to say in regard to that? A. In reference to Mr. Smith's testimony about Mr. Higgins, I want to state that I never have spoken to Mr. Higgins regarding this page. I never have asked Mr. Smith to destroy the file. I went to him Saturday, and I asked Mr. Smith, I says, "Let me look at that file." He showed it to me. I says, "You please bring that file before the committee, and state the truth." I also



says to Mr. Brandon: "All I want you to do, Frank, is to tell the committee just exactly what you know." He told me he would. As to my speaking to Mr. Ryan regarding that bill, or any other bill is concerned, I wish here to say, that I never mentioned it to him. Mr. Ryan, I suppose, will testify to that.

Q. Mr. Ryan has already testified. A. I cannot think of anything else. Every word of it is false—that I ever spoke to Mr. Smith and asked him to raise any bill on the file whatsoever, or that I ever offered him or told him there was any money in any proposition at all. I have been in seven or eight Legislatures, and this is the first time that the breath of suspicion has ever been cast upon me.

Q. What did you intend to do when you cut that file? What did you intend to do with the slip that you had cut? A. I intended, if it were taken up out of order, to place it in its right place.

Q. Did you intend to remove it at the time that you cut it? A. No, sir; I told Mr. Ryan at the time that I did not, that I intended nothing wrong, and told him so at the time. I told him that if it was taken up I wanted to place it in its right place.

Q. That was when Mr. Ryan spoke to you about it? A. That was when Mr. Ryan spoke to me about it.

Q. Do you wish to make any statement in regard to the sidewalk bill? A. Yes, sir; I do. I don't know the first thing in God's heaven about the sidewalk bill. I have not seen Mr. Goodman, although I know him well. I meet him in the city very often. I did not know there was such a bill here at all. I never met him here until yesterday, when he wanted to come before the committee. I have not spoken to him in a year. I never knew that there was such a bill in existence at all.

Q. Did you ever speak to Mr. Smith about that bill? A. I never spoke or uttered a word in regard to it, sir. I never spoke to him, and did not know there was such a bill; and his words are false from beginning to end.

Q. Then in case Mr. Hart had succeeded in taking the bill up on a vote of the House out of order, you would have changed it? A. I would have. Mr. Smith not being present, and Mr. Ryan not being present, I would have placed it in the position where it should have been.

Q. After asking permission of Mr. Smith or Mr. Ryan? A. Yes, sir; I think I would have done so.

Q. You thought it was your duty, in case there was none of the other Clerks at the desk, to place the bill in its proper place, in case it had been taken up by a vote of the House? A. Yes, sir; I think I should have placed it in the position it should have gone.

MR. ELLSWORTH: Would you have considered it your duty—you say you never did consider it your duty—to change the position of any other bill on the file of the House, if the House ordered it taken up out of order? A. I don't think I ever had an interest in any other bill, Mr. Ellsworth; that is the reason why, and it just happened that way. Nobody being at the desk, and therefore I might have placed this in its right place. I never took any interest in any other bill.

Q. And you cannot account for your taking this up at three or four o'clock in the afternoon, when there was no discussion on the bill, and had not been all day, except for the reason that you presumed that Mr. Hart was still intending to call that bill up out of order? A. I did. He told me positively that he was going to take that bill up, and told me that he was pretty sure that he had votes enough to take it up.

Q. He told you he was going to rise to a question of privilege in the morning, and also ask to have that bill taken up in the morning? A. He

told me positively that he was going to take that bill up, out of order, that day; there had been a great deal of discussion about the bill, on account of the action of the committee.

Q. Did he tell you he was going to rise to a question of privilege to take that bill up? A. Yes, sir; he did. That is just about what he told me.

Q. Why did you suppose, after he had passed his question of privilege—risen to his question of privilege and disposed of that matter—that he was going to rise the second time? A. Because he had told me, positively, that he would take the bill up that day.

Q. You say he said that he was going to rise to a question of privilege and take that up? A. I thought that he was going to take it up at the same time. I did think that he would take it up at the same time, but he did not take it up at the time; not until the next morning.

Q. Did Mr. Hart say anything to you about that bill after that question of privilege? A. He did not. I did not speak to him, and have not really spoken to him since.

MR. SMITH: When you started to cut that slip out of that Bill No. 179, if a motion to make it a special order was carried, where were you going to put it? A. I would put it in the place that it belongs.

Q. Where was that? A. If it was taken up and read the first time I would have put it at the bottom of the file.

Q. You said that it was going to be made a special order? A. No; I said it was going to be taken up and read the first time.

Q. You stated here, did you not, that you understood that Mr. Hart was going to take it up and make a special order? A. No; it was to be taken up out of order and read the second time.

Q. Where were you going to put it? A. I was going to put it down at the bottom of the file.

Q. Did you know that the bottom of the file was made up? A. I supposed it was; it was lying there.

Q. Was the day's proceedings finished yet? A. It was not finished.

Q. Do you know that the bottom of the file was not made up until the day's proceedings are finished? A. I do not. I had not seen the file until that day that I know of.

THE CHAIRMAN: You don't know anything about making up the files? A. No, sir.

MR. ELLSWORTH: Could you tell, Mr. Falk, if there were half a dozen bills or a dozen bills that day, and were all to go to the bottom of the file, if this particular bill would be the last one at the bottom of the file? A. Yes, sir; the last one.

Q. How did you know that? A. If it would be the last one read it would be put at the bottom of the file.

Q. How did you know that it would be the last one? A. I supposed that it would be.

Q. You supposed that it would be the last one; this House has been in the habit of being in session to between five and six o'clock, and sometimes after six o'clock? A. Yes, sir; this was quite late in the afternoon; it was quite late in the afternoon.

Q. Why did you suppose that the House would transact any business after you had cut that file? A. I did not know whether they would or not.

Q. Then you were simply taking it out on a blind? A. No, I was not taking it out on a blind at all. I did not take it out on the first place.

Q. You were cutting it to take it out, and if you had taken it out it must have necessarily been on a blind. That is to say, the House had not finished with the bills, and secondly you could not have placed this one in a

place that did not then exist? A. I did not look to see whether the bottom of the file was made up or not; I did not say that I would have placed it there; I say that I might have, as there had been three or four mistakes made in the file.

Q. Can the bottom of the file be made up until the adjournment of the House? A. No, sir; it cannot.

Q. Then that bill you cut out could never have been taken and placed at the bottom of the file? A. No, sir; not until the day's proceedings were finished.

Q. You say you have been apprised of mistakes in the file; will you indicate any of these mistakes? A. I cannot just at present. I know Mr. Jordan has stated that there were half a dozen mistakes, and would call my attention to the fact, and say that to me.

Q. Do you know whether or not any bills have been advanced or retarded on the files during this session? A. I do not, sir; I have no idea that any bills have been advanced or retarded.

Q. Then, when you say there have been mistakes in files, you don't desire to be understood as saying that bills have been changed out of their order—either advanced or retarded? A. I do not. The only day that I ever heard of such a thing was when Mr. Smith made the remark: "There is something wrong with this file;" he says, "these leaves must have been mixed up." This is the only day. I suppose there was a bill taken up out of order.

Q. It was on the day the leaves had been touched, and Mr. Smith thought that somebody had been changing his files? A. Yes; I suppose so. He said that the leaves had been changed.

Q. Had been substituted in place of cut? A. Yes, sir; he said that that day, and that was the only day that I have ever heard of it; but I wish to state that I had no intention in God's world of changing that file, or doing anything wrong in regard to that file.

MR. EWING: Well, in case it had been taken up out of order by a vote of the House, you would have merely taken it off the file, where it had been placed by Mr. Smith, and may probably replaced it? A. Oh, I might have replaced it, or I might not have done a thing with it until Mr. Smith or Mr. Ryan came to the desk.

Q. Might not you have taken it out? A. No.

Q. You just merely had it cut, ready to take out? A. Yes, sir; that is all; I had no intention of doing wrong; that was a bill that a great deal of talk had been made about, and if there had been anything wrong about it everybody must certainly hear about it.

MR. ELLSWORTH: You could not have taken that out if the mucilage had been dry? A. It was not dry at that time.

Q. You intended to take it out at the time, did you not? A. No, sir; I did not.

Q. How did you expect to get it out if the mucilage had not had time to get dry? A. I did not intend to take it out.

Q. What did you cut it for, if you did not intend to take it out; you had made two cuts on the file, one at the top and one at the bottom of the Colusa County Bill? A. Only at the bottom; you see the file.

Q. Now, if you did not intend to take that out, what did you make these two cuts for? A. I don't know; I just intended to take it out, I suppose, on account of taking this interest in the bill. I supposed it would be taken out.

Q. You know, do you not, after the mucilage got dry it could not be

taken out? A. I know it now. I don't know that I thought of it that moment.

Q. You don't know when the motion would be made in the House and carried or not, do you? A. I expected that it would most certainly be made.

Q. But you did not know how soon? A. I supposed it would be, because it was pretty late in the afternoon.

Q. You did not know whether it would be before the mucilage got so dry that you could not move the paper without tearing it? A. I certainly did not think of that, Mr. Ellsworth.

Q. You did not think anything about it? A. No, sir; I did not give the mucilage a thought at all.

THE CHAIRMAN: Mr. Falk, the numbers of the bills—these first numbers, in the lefthand column here—were removed from the top of the file down to and including the Colusa County bill? A. Yes, sir.

Q. Did you observe that at the time you cut that paper? A. I did not, sir.

Q. Did you cut off these numbers? A. I did not, sir.

Q. Do you know who cut them off? A. I have no idea.

Q. After cutting off these numbers could not the bill have been substituted in another place without disarranging the numbers? A. I think it could, sir. I certainly did not cut that.

Q. Then do you suppose that the cutting of these numbers on the printed part of that file was an intention, or might have had the effect of substituting a bill in any of the places, and then renumbering the bills? A. I cannot understand that that could have been any good; because they would have to be placed in another part. I certainly did not cut them off. I had no idea of it. I had no thought of it.

Q. You have seen the file since? A. Yes, sir; I have seen the file since.

Q. You know that these numbers were cut off from the top of the file down to and including that bill? A. Yes; I know it, from seeing the file the other day.

Q. This is the file? A. Yes, sir; I saw that the other night. I don't know whether it shows up that way or not, but I say that sheet is that way.

MR. RYAN: You spoke of Mr. Jordan speaking to you about that file; that there were mistakes and errors. Don't Mr. Jordan and myself hold Smith responsible for the file? A. Yes, I suppose so; but he spoke to me two or three times regarding the bill that had been read the first time, and it was not marked so on the file, or something to that effect.

Q. What he said to you was in relation to the minutes entirely? A. No, sir; regarding the file.

MR. ELLSWORTH: What did he say was wrong about the file? If the file did not show that it had been read the first time, when it had been read? A. Yes, sir; three or four times things of that kind have taken place.

FRANK D. RYAN.

Recalled.

THE CHAIRMAN: Mr. Ryan, what is the duty of Mr. Falk, and has Mr. Falk any right to meddle with the making up of the file for the printer for the day's proceedings of this House? Answer—No, sir; nobody has any right to touch that file at all.

Q. Except Mr. Smith? A. Except Mr. Smith and myself; of course

he has the right to act upon any instruction that I give him. Mr. Falk is supposed to know his duty when he takes the position at the desk. Mr. Falk is assistant to Mr. Saulsbury, and Mr. Saulsbury is Minute Clerk, and he is responsible entirely for the minutes of the House, to see that they are correct, and does the work that Mr. Saulsbury allots to him. I don't know exactly what it is, but they do that work, and as I stated before, Mr. Marston has his special kind of work, and Mr. Smith has his, and Mr. Brandon has his, and each one of the clerks is confined to his special work.

Q. That is the work at the desk; have the clerks been so instructed by you? A. Yes, sir.

Q. When did you so instruct them? A. I instructed my Assistant Clerk; I have not instructed the Minute Clerks, because they are constitutional officers and have their duties defined by the statutes; but my Assistant Clerks, I have allotted work to them, and instructed them in their duty.

Q. Your Assistant Clerks? A. Yes; Mr. Marston, Mr. Brandon, and Mr. Smith.

Q. And it is no part of the duty made by law, or by the rules of the House, for the Minute Clerk to have anything to do with that file? A. It is no part of his business; no, sir.

A. F. CHAPMAN.

Sworn.

THE WITNESS: Mr. Smith used my name last night—I do not know exactly how, but it does not make any difference—in regard to Assembly Bill No. 251. I wrote Assembly Bill No. 251 myself, and was watching its progress. When it was reported back to the House, I noticed on the file that it was within seven of Mr. Smith's own bill—Assembly Bill No. 59, to pay the claim of Edward J. Smith—and the idea struck me that it was a pretty good plan to watch it with reference to that bill, and I watched it for several days, and it remained in the same position with reference to that bill. Finally, for four or five days I did not look at it, and on looking again I found that it was fourteen behind, instead of seven. I immediately came down here to the desk—there were several here—and brought two files the same as I have here, and I said: "Smith, what is the matter with this file? How does this bill get in this position?" and called his attention to both files. I brought two files to him, and said: "What is the matter with this bill? As you will see by this first file, it was within seven below that bill, and in this file it is fourteen below it." "Well," he says, "I do not know; probably an extra page or a page got changed in making up the file, and by that means it got in the wrong position." "Well," I says, "I would like to have it put in the proper position." He says "All right," and changed it at that time—took it off from the page that it was on and put it on the other page, and asked me if I was satisfied, and I said "Yes." I simply wanted it in the right position, so it will have its chances with the other bills. That is all that I ever approached him on the bill or ever asked him about it, and that was to put it where it belonged.

MR. ELLSWORTH: You never asked him to change the position of any other bill? A. No, sir.

MR. EWING: You say you wrote that bill yourself? A. Yes; I wrote that bill myself. I was watching it, to see what had become of it.

Q. Relative to what? A. Relative to the duties of the Journal Clerks. MR. SMITH: Mr. Chapman, at the time you came to me and made that statement, and I said I did not understand it, I asked you to take and study the files over, to see how it happened? A. Yes.

Q. Then what did you find about how it happened? A. You asked me to study the files over and see how it happened, and I went out in the Sergeant-at-Arms' room, and hunted over all the files, and I came back and I said, "I do not know exactly how it has happened, Ed., but I find that on one day your bill, in connection with two others of the same character, appear on the Special File, and the next day they were put back, and the whole thing appears to be mixed up in that operation;" and you said you presumed that was the way it happened.

Q. Putting it back from the Special File to the General File? A. Yes; you put it back from the Special File to the General File, and the whole thing became mixed up; and those seven or eight bills that were ahead of this bill did not belong there at all. I thought there had been a mistake made in the first reading.

Q. Do you know how many bills on the Special File were ordered back on the General File? A. I do not know, but they certainly would not come in between those bills.

Q. There were about eighteen or twenty when I put them back. Did I put mine back in its proper place, or was it above or below? A. I did not look to see; I only looked at it with reference to my own bill—that is all.

MR. EWING: Then your bill had lost ground on his by seven? A. Seven numbers behind. Of course both of them had lost ground from the change of the General File.

Q. But yours had lost two pages? A. Oh, mine had lost a good many.

E. J. SMITH.

Recalled.

THE CHAIRMAN: Mr. Smith, what was your particular bill? A. My particular bill was a claim for \$130, for services rendered the State.

Q. Was that ordered from the General File to the Special File, or was it placed on the General File from the Special File? A. We had a consultation, Mr. Jordan, Mr. Ryan, and myself, as to what bills should go on the Special File, and his construction of Rule 78 was, that those bills introduced to provide for the support of State institutions, and constitutional amendments, should go on the file, and the next day Mr. Ryan came to me and said that Mr. Jordan had reversed his ruling, and he says all claims for services rendered for State officials employed by the State, shall go on to the Special File, and to put them on there.

Q. That was your bill? A. Yes; my bill was for services rendered in the State office.

Q. That was changed from the General File to the Special File? A. Yes; Mr. Ryan understood it at the time.

Q. Then when Mr. Jordan reversed his ruling you put them back? A. I put them all back as near as I could. The bills were taken off the Special File, and I put them back in their proper places, as near as I could. There were two or three deficiency bills left off by error, which were put on the next day.

MR. RYAN: They were not put back on the General File by his reversal, but by the order of the House. They were put on the Special File by the advice of the Speaker; all those that related to deficiencies in the depart-

ments of the Government, and the claims against Government institutions. They were placed on the Special File by the advice of Mr. Jordan. Afterwards Mr. Matthews made a motion that all deficiency bills that related to the support of the Government should be placed back on the General File, and the motion was carried by a two-third vote, the Speaker holding that under the construction of the rule he was of the opinion that they belonged on the Special File.

[At the request of Senator Moffitt, the testimony of E. J. Smith, relating to Senator Moffitt, given last evening, was read by the reporter.]

MR. ELLSWORTH: In regard to Mr. Moffitt's letter, Mr. Smith, did you state that you knew that was in Mr. Moffitt's handwriting, or that you knew that he wrote the letter? Did you state that you knew that to be in his handwriting? A. I said I knew Mr. Moffitt's handwriting.

Q. You did say so? A. Yes; I had seen his handwriting quite often.

SENATOR MOFFITT: Do you remember that I came to you with relation to Bill No. 16? A. Yes.

Q. Do you remember the first time that I came to you about it? What I want to get at is, do you remember how long ago it was? A. It is within a couple of weeks.

Q. It is within two weeks? A. About; yes.

Q. The first time I came to you what did I say to you? A. You pointed the bill out on the file—I forget the exact position it was in then—and you said you would like that bill to be kept back as much as I could, and I told you I would.

Q. Did I offer you anything? A. No, sir; you did not.

Q. Did I ever offer you anything? A. No; you never offered me anything.

Q. When did I come again? A. I think it was the next day, when you came in and complained to me.

Q. You said you would keep it back? A. I told you I would; yes.

Q. And then when did I come to you again? A. The next day you came in with the file, and you said, "You did not do anything for me?" I says, "No, sir." I do not know what excuse I gave you at that time, but I told you I did not do it.

Q. Then what did I do? A. Well, the next day then I received that note. I do not know whether it was the next day or the second day. I do not know whether you came the third time or not; I could not say.

Q. What day did you receive the note? Is the note dated? A. No; the note is not dated. I think I received that note on a Thursday.

Q. You are not positive as to the day? A. No, sir; not as to the date, but I know the day. I think it was on Thursday.

Q. In other words, you do not know the day of the month, but you know the day of the week? A. The day of the week; yes.

Q. You are positive it was on a Thursday? A. I am positive of that; yes.

Q. Did I ever have any conversation with you outside of the Assembly Chamber, with relation to that? A. I forget where it was. When was it I went over to the Senate with a message?

Q. I am not answering questions? A. I think I went over to the Senate one time with a message and I met you in the lobby or in the hallway, I do not know which.

Q. You do not know which? A. It was either in the hallway or the lobby.

Q. You know that I met you in the hallway or the lobby of the Senate? A. Yes.

Q. What occurred there? A. You twitted me for not doing as I promised to do.

Q. Was that before or after, you say I sent you this note? A. It was before I got the note.

Q. And all this business was about Assembly Bill No. 16? A. Yes.

Q. Did I ever talk to you about any other bill? A. The bill that we spoke about this evening you did.

Q. Senate Bill No. 192? A. One hundred and ninety-two; when that was on the file wrong.

Q. What day did that first appear upon the file wrong? You remember about the time Senate Bill No. 192 first appeared upon the file? A. It was only on the file one day. It was about a week ago.

Q. Well, are you sure it was not on the file two days? A. I can tell by referring to these files.

Q. It was on a Thursday, was it? A. Thursday, February seventeenth.

Q. And it must have come in here the day before. Is that the day when the bill came in here from the Senate? A. The bill must have come in from the Senate the day before, and was sent to the committee on this day.

Q. Then that bill appears upon the Assembly File on Thursday, does it? A. Thursday, the seventeenth.

Q. That is Senate Bill 192? A. Yes.

THE CHAIRMAN: That is the bill that Mr. Smith says he does not know how it got on the file? A. That is the one.

SENATOR MOFFITT: Now, with relation to that Bill 192. You say that I wanted you to handle Bill No. 16 on the file for me? A. Yes.

Q. Now, did I have anything to say to you with relation to Senate Bill 192? You remember I refreshed your mind earlier in the evening on it? A. Yes, I remember.

Q. Did I have anything to say to you relative to that bill, and if so, what was it? A. When we had our talk here that day you wanted to know how it was that it was on the file, I think. Let us see; I do not quite recollect that. I know I went to Mr. Ellsworth, and asked him if he recollected about that bill, and he said he did not know; he said there were two bills that would amount to about the same amount or somewhere near that, and then said it was kind of funny that that bill was on the file; and then I think I said about the same thing to you.

Q. What I want to know about is on what date; the seventeenth? A. Then I think I said to you what Mr. Ellsworth said.

Q. You certainly remember me having a conversation with you relative to that bill, and I told you it was improperly there, and did not belong there? A. Yes.

Q. Did I tell you anything about keeping the bill back until such time as I could find out something about it? A. Yes; you did.

Q. What did I say? A. I told you I had the bill in my possession ready to go to the committee; I had it then in the committee box. It had not been sent to the committee yet. It was referred that morning, and I had not sent it then.

Q. In regard to this note that you claim is in my handwriting; you say you know it is in my handwriting; how do you know my handwriting; did I ever write anything for you? A. No; I have seen your handwriting during all of last session.

Q. Well, will you swear that that is my handwriting? A. To the best of my knowledge it is; I do not know whether it is or not.

Q. According to your testimony, I was talking to you about two bills—

that is A. B. 16, and S. B. 192? A. Yes; those are the only bills you have talked to me about this session.

Q. Sometimes talked to you about one and sometimes talked to you about the other? A. Yes.

Q. Which of those bills did this note refer to? A. My impression is that it had reference to the opium bill.

Q. That is what you testified to the other night? A. Yes.

Q. Are you sure of that now, or do you just think it is. If you have made a mistake correct it, and if you repeat it, why do so? A. My impression is that it had reference to that opium bill.

Q. Well, are you sure that it had reference to that opium bill? A. I will tell you the reason why I think it referred to the opium bill, is on account of the last sentence in it. You see 192 was not on the file, or was not over here, the day before; I may be off about it, but I looked at it that way.

Q. I think you are off about a good many things. Now, another question I want to ask you: At the time that I spoke to you about Bill No. 16, as you testified, was that before the bill had gone to engrossment? A. Yes; it was before it had gone to engrossment.

Q. It was before the bill had gone to engrossment? A. Yes.

Q. Can you tell the day that the bill went to engrossment? A. Yes; I can tell.

Q. What day did the bill go to engrossment? A. Well, I will look and see.

Q. Did you receive any word or notes or messages from me or anything relative to Bill No. 16 after it had been read the second time and gone to engrossment? A. The notes that I wrote to you were written the day that the bill was ordered engrossed, and all our conversations and the receipt of that note was before it was ordered engrossed.

Q. After it had been engrossed and it came back and got on the file for third reading did you converse with me at all about the bill? A. When you came over one day and looked at the bill—I do not know as you looked at it or not—you asked me what the amendment was, and I told you, and you said that the bill was all right now; that you did not care whether the bill went through or not; that it was all right. I think the amendment suited you.

Q. That was after the bill had gone to engrossment? A. Yes.

Q. Now, when did the bill go to engrossment? A. It was read the second time and ordered engrossed and to third reading on the tenth, and on the tenth it went to the printer as amended.

Q. On the tenth of February? A. On the tenth of February; yes. And reported back correctly engrossed on the eleventh.

Q. Then you are positive that you received that note from me before the tenth? A. Yes; I must have received it.

Q. That is not the point—when you must have received it. You swear you received that note from me before the tenth of the month? A. Yes; I know I received it before the tenth.

Q. Now, I want to ask you if this might not be true: Might it not be true that that note which you say you have received was in relation to Senate Bill No. 192? Might that be the fact? You have been talked to by so many people, about so many different bills, that you might have got this confused. Might it not be true that that note applied to Senate Bill No. 192, which was improperly on the file, and which you admitted earlier in the evening that I told you was improperly there? A. It might have been so.

Q. Then it might have been that that note applied to Senate Bill 192? A. It might have been so; yes.

Q. Now, what day did Senate Bill No. 192 come in here? A. It was on the seventeenth.

Q. Now, there is a wide variance there. A few moments ago you said positively that it came in before the bill went to engrossment; now you say it might have applied to Senate Bill No. 192. A. It might be. I am positive and fully certain that I received that note long before the seventeenth.

Q. Then why do you say that it might have applied to Senate Bill No. 192, which came in here only on the seventeenth. It might have been that Senate Bill No. 192 came in here before the seventeenth. Do you know the day when Senate Bill No. 192 first appeared upon the files. It appears in this Thursday's issue, but it might have been there a week before. A. Senate Bill No. 192 was on the seventeenth of February referred to the Committee on Education in the Assembly.

MR. ELLSWORTH: What time was it received? A. This book does not show the day that it was received. It ought to show it. The committee has got it now.

Q. That is the Journal? A. Yes.

Q. Well, the printed files would show? A. It has not come back from the committee. The committee have got it in their possession.

SENATOR MOFFITT: I want to question you once more, then we will leave that and take up another branch of it. You do not know as a matter of fact, now, whether that note applied to Senate Bill 192 or Assembly Bill No. 16. You cannot swear as to which of those bills it referred to. What do you say to that? A. Taking everything into consideration, I am of the opinion—

Q. Just tell me what your impression is? A. Well, my impression was that it applied to the opium bill.

Q. While you have that impression, it is true that it might have applied to 192? A. It is; yes.

Q. Now, with relation to this man who came to the desk, as you state, and spoke to you about the note that you wrote to me? A. Yes.

Q. You stated something in relation to Senator Hearst's Private Secretary? A. He looked a good deal like him.

Q. Do you know Senator Hearst's Private Secretary, Mr. Townsend? A. Yes. He looked a good deal like him.

Q. Was it him? A. No. It could not have been him, because he was not up here. I know him personally.

Q. I am speaking of the man that came to the desk and looked at Assembly Bill No. 16, who you said was dressed like Senator Hearst's Private Secretary, or looked like him. A. He is a newspaper man whom I saw.

Q. Would you know the man if you saw him again? A. Yes.

Q. Suppose I was to bring up Mr. Townsend to you, would you say it was him? A. No; I know it was not.

Q. You are sure it was not him? A. I am very sure it was not him.

Q. Well, in your evidence it rather connects Mr. Townsend, and I am asking these questions simply that Mr. Townsend be disconnected. A. I know Townsend personally.

Q. Then it was not Townsend? A. No, it was not him; I am sure of that.

Q. Now you spoke about a matter of your losing a lot of money, and me losing \$200. What is there about that? A. Well, it was last Friday evening, if you remember, I was sitting on the railing there in the lobby.

Q. During what time Friday evening? A. I should judge it was about seven, or a little after seven, somewhere about that time.

Q. About half-past seven last Friday evening? A. Yes.

Q. You are sure it was Friday evening? A. Well, I could not say for sure.

Q. Can you say anything positive? A. Well, I think it was Friday evening.

Q. Well, now, do you swear that it was Friday evening? A. Well, I may be mistaken about it.

Q. I think you are mistaken about everything you say? A. I think it was the latter part of the week.

Q. Was it Thursday evening? Was it the evening that this appeared on the file, or was it the next day, or when was it? A. It was the latter part of the week. It might have been Thursday, or it might have been Friday. I am kind of certain it was Friday.

Q. Well, then, you swear it was Friday? A. To the best of my knowledge, I will swear that it was Friday.

Q. We will consider that you have sworn it was Friday? A. Yes.

Q. You met me in the hallway, did you? A. Yes.

Q. Now, tell me what occurred there. All I care to hear is with relation to the remark that you say I made. You said that I said that you had lost \$75 and I had lost \$200? A. I was sitting on the railing there, talking to Bruck, and was waiting for the printer's messenger. That is how I happened to be there; and when you went by we had a talk, and you says—you called me "Smoothy," I think, or "Smithy," I do not know which—

Q. "Smoothy," probably. A. You says, "Old Smoothy, you have beat yourself out of \$75, and you have beat me out of a couple of hundred."

Q. I was walking by, and I walked right up to you and said that, did I? And then, where did I go? A. I guess you went outside. Mr. Schwartz was with you at the time.

Q. Mr. Schwartz was with me at the time? A. Yes; he was with you.

Q. What did you say about my saying it so loud that it could be heard all over? A. I testified that it could be heard all the way up to the Speaker's desk—almost.

Q. Mr. Schwartz was with me? A. Yes.

Q. If I made that remark to you Mr. Schwartz must have heard it? A. He certainly heard it, yes; you said it loud enough for anybody to hear you.

Q. Did I ever talk to you about money on any other occasion only in the presence of Mr. Schwartz? A. No; I do not think you did.

Q. You say that is the only time, and then I talked so loud that Mr. Schwartz must have heard it? A. He must have heard it, yes; he could not possibly have evaded hearing it.

Q. If Mr. Schwartz was to say that he did not hear it you would think you were crazy, would you not? A. No; I would not, because you said it so plain.

Q. If Mr. Schwartz was to say that he did not hear me say that to you, you would think he was a liar would you not? A. No; I would not say that he was a liar, because he may not have paid attention to it.

Q. Well, this thing I want to impress upon you. You say that I said that to you loud enough for Mr. Schwartz to hear? A. Yes.

Q. "Old Smoothy, you have lost \$200." A. No; \$75.

Q. "Smoothy, you have lost \$75, and I have lost \$200?" A. A couple of hundred dollars.

Q. That is it, exactly? A. Yes; exactly.

Q. And I said that loud enough for him to hear? A. Yes.

Q. You say it could be heard up to the Speaker's desk? A. Yes.

Q. How did I say that to you? A. You said it in a very loud tone of voice.

Q. If I was in that business, is not it a funny way to do in talking about a matter of that kind, that lays a man liable to felony; is not that a very funny way to talk? A. I should judge it was.

Q. How did I come to say it to you; what did you think; did not you think I was a damn fool, or something of that kind? A. I did not pay any attention to it, anyhow. You went out, and I said to the young man that was with me—Al. Bruck—I says: "Moffitt will be mad at me, anyhow; he will say anything to me, now." That is what I said to Bruck.

Q. Did I ever give you any money, at all? A. Never, in your life.

Q. Did you ever try to get any money out of me? A. No, sir; never.

Q. You swear you never tried to get any money out of me? A. Not for any purpose.

Q. Well, for any purpose in the world? A. Well, I asked you to loan me some, once.

Q. You did ask me to loan you some once? A. Yes.

Q. When was that? A. One day last week.

Q. Can you remember the day? A. It was just preceding this conversation.

Q. Which conversation? A. When you said that what we just spoke about.

Q. When Schwartz was there? A. Yes.

Q. Mr. Schwartz must have heard you ask me for the loan? A. I called you off to one side.

Q. Did you say it loud enough for anybody to hear it? A. You said "No, I have not got any," that is the way you brought it in.

Q. You asked me for money, did you? How much did you ask me for? A. I forget, what I asked you for.

Q. Did you ask me for a dollar? A. I wanted to get it to loan to Bruck; Bruck was broke.

Q. Did you ask me for a dollar? A. I do not know.

Q. How much would you be liable to ask me for? A. A couple of dollars. You would not give it to me; you said you hadn't it.

Q. Is not this the fact, that because I refused to give you money the other night, that that is the animus of all this? A. No, sir; it is not.

Q. That is not? A. No, sir; it is not.

Q. Please repeat that in regard to that money matter? A. After I neglected to do it the first time, and I promised I would do it for you again, you said the sooner that I did it the sooner I would get the money?

Q. What money? Did I ever speak to you about money, sir? A. At that time.

Q. At what time? A. At the time you wanted me to shove the bill down.

Q. The first time I came to you? A. Yes.

Q. Did not you swear a little while ago that I did not talk to you about money directly or indirectly, or that I did not offer you money? A. You offered me money. I did not offer you money.

Q. Let me go back to the first time that you say I talked to you on this bill. A. Yes.

Q. Now, tell us again what occurred, and tell us a story that you are going to stick to. A. I will tell you a story that I am going to stick to. Mr. Moffitt, when you came to me you told me to keep that bill down, that



there was something in it for me, and when I did not keep it down the first time, the second time you came to me you said: "The sooner you do that the sooner you will get your money;" and Mr. Marston was sitting there. Mr. Marston says, "I know all about it. I told Mr. Moffitt what to do to you last night in the barber shop." Mr. Marston sat right there; and now I will tell it just exactly as it occurred. Mr. Marston says to me, "I know all about it," and I says, "You do not know what bill that is he is after." He says, "I do." I says, "You do not." He says, "I will bet you five dollars I do, because he told me all about it in the barber shop, last night." And it turned out that Marston did not know anything about it, but he heard you talking to me there, and he wanted to find out what bill it was. You always spoke in a loud tone of voice, like me, and they would hear it.

Q. You are satisfied then that when Mr. Marston said he knew all about the bill, he did not know what bill it was? A. He did not know what bill it was. He did not know what bill you were talking about.

Q. Let me have it again; what I said to you the first time, and then what I said to you the second time. Tell me about the conversation, and tell me about the way I approached you? A. Well, you came up and you pointed on the file to this bill, and you said, "I want to keep that bill down. I want you to keep that bill down."

Q. Had I ever approached you before at this session, or any other session, or any other time? A. No, sir; you never did.

Q. Then I went up to you with a great deal of assumption, and says, "Smith, I want you to keep this bill down, and I will make it right with you?" A. I do not know how you would take it, but that is what you said.

Q. That is what I did? A. Yes.

Q. The first time I ever did any kind of business with you, I walked up to you in that manner? A. Yes.

Q. Then what else occurred? A. Well, I told you I would do it, and I did not do it, and the next day you came over with the file in your hand—no, it was the third time that I saw you that you called me out there; the Page came and told me you wanted to see me down there, and we sat down there by that post, and I said I would do it again, and I did not do it.

Q. I have no knowledge of that. I have a knowledge of walking up here with a file in my hand, and talking with you on that other bill. This bill, of course, I deny. A. It was long before that bill.

Q. Now, what did I say to you the second time when you did not shove it down? A. Well, you said the sooner it was shoved down, the sooner something would come.

Q. You inferred, from what I said, that the sooner the bill was shoved down, the sooner you would get money? That is what you mean by "something," is it? A. Yes; that is what I mean.

Q. Did I say anything to you about it the third time, when you were sitting over there by the post, as you say? Did I talk or say anything about money to you then? A. No, sir; I do not think you did.

Q. As a matter of fact, did I ever at any time lead you to believe that I intended to give you any money? A. Yes; I think you did.

Q. You are under that impression? A. Yes; I am.

Q. Did I ever say anything to you in a way that might lead others to imagine that that was what I meant? A. Well, just the way I testified.

Q. Did I say I would fix you, or I would kill you, or that I would see you were properly greased, or give you some soap—what did I say? A. You said you would see that I would get something just as soon as this was through.

Q. What did you say you understood by that? A. It would be money, I suppose.

Q. Well, it might be a drink, or I might mean that if you did I would say that you would get something, and mean six years at Folsom. How did you understand that I should mean money? Was your mind on that all the time? A. You took such a large interest in the bill, and you came over to look at the amendment—at least you said you were satisfied it was properly amended, and that you did not care whether it was carried through or not.

Q. Did you go to Henry at any time? A. Yes.

Q. Did you mention my name to Henry at any time, or show Mr. Henry the note with my name signed to it? A. Yes. I do not know how he knew that I had the note.

Q. Did you show Mr. Henry the note on the day that you received it, or later? A. On the same day.

Q. The identical day? A. Yes.

Q. Then if Mr. Henry was to come in here and swear that it was on the first of February, why, that would be the day that the note was received? A. The day that I received the note I showed it to Mr. Henry.

Q. Do you think I am in the habit of writing notes without dating them? How do you account for my neglect in not dating it? A. I can not account for it at all.

Q. How do you spell "shove"? A. S-h-o-v-e.

Q. How is it spelled there? A. There is no "e" on there.

Q. What is it? A. S-h-o-w.

Q. Why did you read it "shove"? Because you wrote it "shove," did you not? A. I did not write that note.

Q. I did not say that you did. A. Well, you say because I wrote it.

Q. I thought you might say you did.

WEDNESDAY, February 23, 1887.

E. J. SMITH.

Recalled.

THE CHAIRMAN: Mr. Smith, look at that telegram now shown you, and tell us if that is the telegram that you sent to San Francisco? Answer—That is a copy of the one I sent. I made that in your presence in the telegraph office this morning.

Q. That is the one which you were requested to go this morning with me to get? A. Yes.

Q. You sent that to Mr. Bulkeley? A. Yes.

Q. If you have any explanation to make in regard to that telegram, please make it. Read the telegram. A. "February 19, 1887, to L. E. Bulkeley, Washington and Montgomery Streets, San Francisco. You have deceived me. If you do not telegraph twenty dollars to me this day I shall do the bill harm. E. J. Smith."

The telegram was marked Exhibit "E."

THE CHAIRMAN: I will state to the committee that I compared it with the original and it is a true copy.

MR. EWING: What did you mean by saying that you would do the bill harm, Mr. Smith? A. Well, as I have already told the committee, Mr. Bulkeley had requested me to do a great many things for him in the way

of collecting bills and sending them down to him to 'Frisco. I have already stated that. And after I had started in to do that kind of work for him, he saw me talking to Mr. Hyde one day and he asked me to inquire of Mr. Hyde how he stood upon this bill. I requested him to go himself. "Well," he says, "when the bill comes up I want you to use your influence and do all you can with Mr. Hyde and Mr. Wilson because they are both against the bill, and I want you to do all you can towards getting the bill passed, because I cannot get you to ever change anything;" but he says, "Attend to my bill; do all you can to assist me," and he says, "as soon as the bill passes, together with all this that I have given you—this \$5 that I have previously given you," he says, "I will give you some more, whatever I think is reasonable." "Well," I says, "I cannot lobby for the bill, but if I can speak on the merits of the bill for you I will do it." I says, "Mr. Wilson and Mr. Hyde, as you say, are both against the bill and I would not like to talk to them, because I do not know them only during this session." And one day last week I had a talk with him, I think it was in the presence of Mr. Daggett. He was in the Golden Eagle Hotel that night about twelve o'clock, in the reading room, and I gave him information in regard to his bill. I told him that if the bill had not gone through the Board of Examiners, and had not taken the regular course of law and been presented to the Board within four months preceding the meeting of the Legislature, that John P. Dunn would not draw a warrant, and even if he did draw the warrant—at least if the bill passed—Governor Bartlett would not sign the bill, and if he did sign the bill, Dunn would not draw the warrant without a lawsuit because the law had not been complied with. I came up here to the State Library with him—he is a lawyer, but seems to be very defective about those things—I came up to the Law Library and I assisted him. I showed him the law requiring the bills to be presented to the Board of Examiners within four months preceding the meeting of the Legislature, and to be approved by them. No matter whether it was approved or disapproved, it should be passed upon by them before it could be passed upon by the Legislature. I hunted up a great many authorities for him and showed him fifteen or twenty decisions upon that in different States, and I advised him and told him, as a friend, that he ought to go through that course now and have the Board of Examiners meet, as they would meet in time for him to present the matter, and that would save any suit if the bill passed. And he thanked me kindly, and he said he had no money with him, but he said he would pay me for my services. That was on this night before Mr. Daggett, and he told me that he would see me later—to-morrow. The next day he went to San Francisco, and he stayed in San Francisco, and I did not see him again until he came up here last Saturday. I figured on him paying me for what I did, and as he had deceived me in the way he did and in the manner that he did, I sat down and I wrote this telegram to him. And the way that I intended to injure the bill was to tell members what I had done for him, and the way that I had recommended him to go through the regular course to have it passed upon or rejected, either one way or the other, by the Board of Examiners.

Q. Then this \$20 refers to those outside services rendered? A. Yes. I intended to say nothing about this matter at all, because it did not apply to anything but for services that I had rendered him.

Q. You did not propose to change the bill in any way on the file? A. No, sir; I had absolutely refused. This was after I had absolutely refused to change anything or do anything of that kind. This was only last Saturday.

Q. When was this telegram sent? A. Last Saturday, soon after this committee was appointed.

Q. This \$20 you asked him to send you for services rendered? A. Yes, sir.

Q. That had no reference to changing this bill? A. No, sir; there was no money owed me in this Legislature on any bill that I did anything for.

MR. ELLSWORTH: What did you mean by saying that he had deceived you? A. Well, he has deceived me by telling me that the next morning he would pay me that \$20, and in the morning he went to San Francisco and did not come up until he was before that committee Saturday night. That was the first time I had seen him since that time.

THE CHAIRMAN: Mr. Smith, have you employed any person to regulate the files for you, to enable you to furnish files to any person requesting them? A. You mean the bills?

Q. I mean the bills; regulating the bills according to numbers. Have not you employed persons to regulate those bills or put them in their places according to numbers? A. No. There was a party here—a big tall fellow—who kept boring me at the beginning of the session. He said he was keeping files for the members of the Assembly, and he asked me if he could not keep a set of files for me.

Q. Fixing the bills in their order? A. Yes. I says, "No, I am able to attend to that myself." Well, he kept after me so often, and I says, "Well, I do not really care about keeping the files myself," and I says, "all the amended files that go through, that are reported back, or that are ordered printed, I want you to keep track of those, and keep them for me, and at the end of the session, I will pay you whatever is proper." He came to me about four days after that for \$5, for services on account.

Q. Services for hunting up bills? A. Yes. I says, "Look here, I do not pay you for nothing until the end of the session, until these amended bills are all complete, and whatever is reasonable I will pay you." He is a strong colored fellow out here.

MR. EWING: You merely wanted to have those, in case you wanted to refer to them? A. The amended bills. I did not care for the original bills. The reason why I wanted the amended bills was because when they are remodeled again I can use them to send to the printing office with interlineations. That is all I care to have them for. He was such a nuisance, too. He would come up to the desk and get the numbers from me, and by the time I would give him the numbers I could get the Pages to get the bills for me. There is no person can get the number of the bill except from the printed copy that I have got in the dead hole.

JACOB SHAEN.

Sworn.

THE CHAIRMAN: Mr. Shaen, do you desire to make a statement in regard to the evidence that has been given in reference to you? You know what has been testified to? Answer—Yes.

Q. Well, go on, and make it as concise as you can. A. Well, I will state in regard to Bill 122—that is a bill relating to the office of the Insurance Commission—and 140 I do not know anything about; I never read it; never looked at in my life. As a general thing, whenever I came in for my bills for engrossment I did not get them, because on several occasions there has been one or two left over until the next day. I have

to take them and engross them and return them in twenty-four hours. I went up to the desk and told Mr. Smith that I wanted all bills every evening that were ready for engrossment; should be sent immediately to me. I told him particularly to send 8, 9, 10, and 122 to me at once. That pertains to the Insurance Commission, and Mr. Wadsworth wanted it engrossed and sent back as soon as possible. I never said anything in the world to him about advancing it on the file; there was no such talk or anything of the kind; I merely pointed to the bill that I wanted. I never spoke to Mr. Mann about it; never have any recollection of speaking to him. I believe his bill was introduced by Mr. Taylor. I do not believe there was anything said about fixing it on the file. I have got no interest in that bill. In regard to this pavement here, I do not know anything about it; I never knew what the number of the bill was. Of course Mr. Smith did not testify that I asked him to advance that on the file, or anything of the kind; he simply stated that I had an interest in the matter and would divvy with him. I never had such a conversation, and do not know anything about the bill. I spoke to Mr. Goodman, the man that had the bill introduced, on the train; I never said anything to him about the bill at all. In regard to Bill 122, Mr. Wadsworth was here in the morning and met me out in the lobby, and I told him that just as soon as that bill comes to me for engrossment I will engross it immediately. I believe I have told you, Mr. Davis, and also you, Mr. Ellsworth, the same thing. I told you I would engross it immediately.

Q. You told me you had engrossed it, and told me to look it over and see if it was correct? A. Yes. I have always told members, when they would ask me about a bill, that I would engross it as soon as possible. I knew the Insurance Commissioner only when he kept a lodging house in San Francisco, and that is all. Nobody ever asked me to have it advanced on the file. I do not know anything about it at all. I would simply come to the desk as I do every night, and Mr. Smith gives me bills that I have to engross, so that I can get them done that night. That is all I know about it.

Q. Then Mr. Mann never asked you to advance that bill, and never requested you to ask Mr. Smith to do it? A. Never in the world.

Q. Or to put it back or to change its place on the file? A. Mr. Mann has known me for a number of years, and we have been social friends. He has asked my advice in regard to drawing up resolutions frequently.

MR. ELLSWORTH: Did you say to Mr. Smith in substance to advance such a bill for Mr. Mann, or to keep it back in the file? A. Never in the world.

Q. Whether it would be any gratification to Mr. Mann, or anything of that kind, if he would do it? A. No, sir.

Q. Nothing of that sort? A. No, sir.

Q. Mr. Mann never asked you? A. Never in the world. Mr. Mann never spoke to me about it.

MR. SMITH: You say, Mr. Shaen, that all bills must be reported back in twenty-four hours? A. No; I did not say that.

Q. You stated that? A. The law distinctly says that all bills shall be reported back by the Engrossing Clerk within forty-eight hours, or they can ask for further time.

Q. You stated twenty-four? A. Mr. Ryan said so, too, but he is mistaken, too. The law requires that bills should be reported back in forty-eight hours.

Q. It is your duty, is it, to return all the bills and take your receipt? A. Yes.

Q. You say that you did not get the bills on several occasions every day; that some laid over for another day? A. There was one that I recollect of. You will recollect that one that was laid over one day.

Q. Was that my fault? A. No; that was no fault of Mr. Smith's. I will say this for Mr. Smith, that he has been very regular in handing me all the bills.

Q. I have often jawed the other clerks about it, have I not? A. Yes. He has taken my part when I insisted on getting the bills promptly from the clerks whose duty it is to give me the bills. I said he ought to give me the bills before he went to dinner; that I could not wait until after he came back, one o'clock. Mr. Smith has insisted on that too, and that was no fault of Mr. Smith's at all. This bill got mixed up with some others, and did not get to me until next day. I saw that in the Journal, and I says there is another bill that must come to me; and they looked through and found it and handed it to me. Mr. Smith has been very regular in handing me all the bills, and I have nothing to say in that respect.

MR. ELLSWORTH: What did you mean a moment ago when you said that you did not always get them? A. This one time; that is, I did not always get them; that is, the moment the Assembly adjourned.

Q. I understood you to say a few moments ago—or, to use the language which would leave the impression—that it repeatedly happened that you did not get them? A. No; only on one occasion; there was one bill laid over; it was not handed to me until the next day.

THE CHAIRMAN: It was no fault of Mr. Smith's? A. No, sir; no fault of Mr. Smith's. That was an oversight; simply an oversight as to that one bill. It was some short bill; I do not know whose it was.

MR. EWING: There was no intention about it? A. No; there was no intention at all about that; it was simply a mistake.

Q. You say Mr. Goodman had that sidewalk bill introduced? A. Yes.

Q. How do you know that he had it introduced? A. He told me up here.

Q. When did he tell you? A. I know he met me and told me that he had a bill introduced for an appropriation to lay down pavement sidewalks—the same as he had two years ago.

Q. When did he tell you that? A. I believe he told it to me one day here—I think he came up with me one day on the train.

Q. How long ago? A. I think it was one day last week; I am not sure about that.

Q. And since the appointment of this committee? A. That I could not say. I think it was before that.

Q. Did Mr. Smith ever mention the matter of the bill to you in any way? Did you mention it to him? A. I never spoke to him about it. I never knew that the bill was introduced until Mr. Goodman said so. I never saw the bill, and did not know anything about it.

Q. You never had any conversation with Mr. Falk and Mr. Smith in regard to it? A. About that bill?

Q. Yes. A. Never in the world. I have been too busy in the last two weeks to have any conversation. Mr. Goodman never spoke to me about it, except that he had a bill introduced for another appropriation to lay down these pavement sidewalks, and did not discuss the merits of it or anything about what it was.

MR. EWING: Then you emphatically deny saying to Mr. Smith that in case that bill went through you would divvy with him? A. Certainly. I never knew anything about the status of it or anything of the kind, except-

ing Mr. Goodman said he had a bill introduced the same as he had two years ago. I did not even know what the amount was or anything about it. I have known Goodman for years.

ALLEN HENRY.

Sworn.

MR. ELLSWORTH: Have you ever seen that letter now shown you before [referring to Exhibit "A"]? Answer—Yes; I did, I think.

Q. Please state to the committee when you first saw it? A. Well, I would not say positively what day it was, but I think it was a week ago last Friday.

Q. Do you recollect the day when this committee was appointed that is now investigating this matter? A. Yes, I recollect the time.

Q. Do you know whether it was before or after the time of the appointment of that committee? A. I think it was probably three or four days before, because at the time that the committee was appointed I thought of this matter.

Q. You remember thinking about this matter at that time? A. Yes.

Q. And you are positive that it was before the appointment of this committee? A. I am positive that it was before this committee was appointed.

Q. Can you say how many days before, about? A. Well, I should think it was about three or four days before; it was not but a few days before.

Q. You are positive you saw it before the appointment of this committee? A. Yes; I am positive that I saw it before the appointment of this committee?

Q. Can you tell whether it was the day before, or more than that? A. I could not. I think it was about three or four days before, to the best of my recollection, that I saw some note that resembles that very much. I should take that to be the same note.

Q. Did you ever have any conversation with Mr. Moffitt about that letter? A. About that letter?

Q. Yes? A. No, sir; never.

Q. Who showed you that letter, Mr. Henry? A. Mr. Smith. I have not spoken to Mr. Moffitt since I saw that letter. I would like to hear the statement that has been made here in regard to this matter.

[The evidence of E. J. Smith relating to Mr. Henry was read by the reporter.]

THE CHAIRMAN: Now you can make any statement you desire in regard to that? A. In regard to this conversation about this bill: The bill was introduced, and Mr. Moffitt came to me and he says, "I see you have introduced a bill to prohibit the smoking of opium;" he says, "I shall have to oppose that bill because it injures"—I think he says—"our wholesalers." I do not know but that he said "importers;" I am not sure—that it would injure some of our wholesalers—and we had some words about it. "Well," I says, "oppose it if you want to." "Well," he says, "I will have to do it." I said, "Oppose it if you do not like it," and he walked off, and that was the only conversation I ever had with him about it; and the bill was amended in the committee.

Q. In the Assembly committee? A. Yes. I was not present before the committee, and knew nothing about the amendment until I saw it. It

shows by the indorsement on the back that it was amended in the committee on the twenty-fifth day of January.

Q. What committee was it referred to? A. It was referred to the Committee on Public Morals. About the first of this month Mr. Smith told me that Moffitt was going to oppose my bill, and I says: "Let him oppose it if he wants to," and I thought nothing more of it until a week or ten days ago—ten days ago, I think. Mr. Smith motioned for me to walk up this way, and I walked up this way and he showed me this note. As a matter of fact he did not bring that note to my desk. He motioned to me and I walked up here and he showed it to me in this aisle. He stepped away from his desk, and I stood in there and he showed me the note. He says: "What are you going to do about it;" I says, "I am not going to do anything," and he says, "Moffitt wants it shoved down;" I says, "The hell he does;" I says, "You let it alone; I am watching this bill." The bill came up for third reading, and as a matter of fact, I got up and counted and there were but forty-one members in the House, and I asked that the bill be passed. The bill came up at the head of the file, and I got up and stated on the floor of the House that there were not members enough here to pass any bill, and that I should ask to have that passed, and that I thought that members having bills in the place they were that they should ask to have them passed, but I had no authority to do it. I stated that here on the floor of the House, and the Journal will show it. The next bill, or the second one after that, was rejected, and they quit; and then they quit a third reading of bills. That was when the bill was passed on file, and I think that was the last time; I think it was the fifteenth of this month, but I am not sure. But soon after this note had been shown to me, Mr. Smith met me at the Golden Eagle Hotel, or somewhere right along on the sidewalk, and he appeared to be pretty full of benzine, and he says, "Can not you loan me \$20?" I says, "I am not doing that business;" and there was nothing more said about it until about last Monday or Tuesday; I think it was after this had taken place, he met me out in the lobby there, and—

Q. After what had taken place? A. After this note had been shown to me, and after this had taken place at the Golden Eagle, he then met me out in the lobby—I was getting a cigar—and he rushed up to me and says, "Loan me a dollar." Well, we generally loan a man a dollar to get him a supper in our country, anyhow, if he is hungry, and I pulled out my purse and I says, "I have not got a dollar; nothing but a ten-dollar piece." But a friend of mine standing by said he had a dollar, and I gave him a dollar. He has not paid it back yet, but I presume he will when he gets his warrants cashed. I do not know whether he brought this news to me for a motive or not. I do not know. He might have just brought it as a pressure to borrow the \$20. It looks that way to me now, but I am not positive. But as far as this conversation about being fixed, or Mr. Moffitt fixing me, or anybody else fixing me, there is not a word of truth in it. It is absolutely false, from beginning to end. I have never had a word with Mr. Moffitt from the time that he first spoke about this measure, about this bill, when I told him if it did not suit him to amend it; and Mr. Moffitt may have gone before the committee or may not. I do not know who went before the committee, and do not know who had the bill amended.

Q. Did you ever have any conversation with anybody else with reference to amending the bill before it was amended by the committee? A. No, sir; I never did.

Q. Did you ever request to have the bill passed on file, except when it

was on third reading? A. I do not think I ever did. I think the Journal will show that I never did.

Q. Did you ever, on any other occasion, except when you thought it was not well to press the bill to passage because there was not but forty-one members in the House? A. That was the time, because there were only forty-one members in the House.

Q. That was the only reason you ever asked to have it passed on the file? A. Yes.

Q. Because you thought it was not safe to have it acted on then? A. I knew it was not safe, and I got up and so stated on the floor of the House. I have not seen Mr. Moffitt to speak to him since I saw that note. I never had any conversation with him whatever. I have seen him at a distance, but I never spoke to him.

MR. EWING: Then you deny saying to him to leave the bill where it was, that the parties had not come up yet? A. Yes, I do. The only thing I ever said to Mr. Smith when he spoke to me about it; I says: "The hell, he does," I says: "You let that bill alone, I am watching that bill." I never had any conversation with him about it; never had any conversation with him about fixing anybody, or him, or any one else.

#### T. J. HART.

Sworn.

MR. FALK: Mr. Hart, did you state to me the night before you raised to a question of privilege, or what did you state to me the night before? Answer—I stated to you in the presence of several gentleman the night before, I think it was at one of the hotels, in the presence of several gentlemen, after reading the Colusa "Sun," that I intended to rise to a question of privilege, and I thought at the same time that I would make my bill a special order; to take it off the file and make it a special order.

MR. SMITH: You told Mr. Falk you intended to do that, to have it made a special order, and not to be read the first time? A. Yes, a special order. I intended to make it a special order. Of course I did not know exactly the parliamentary manner in which to get at it.

Q. Mr. Hart, you remember the night that I came to you and told you that parties had approached me to place that bill on file and push it up on the file as far as I could? A. Yes.

Q. What reply did you make then? A. I told you that I would not have anything to do with it. It was a bill that I wanted passed on its merits, if it had any; if not, I wanted it defeated.

#### ALLEN HENRY.

Recalled.

THE WITNESS: One thing more I forgot to say. I told Mr. Smith if that bill was fooled with, I would fix him at the same time.

Q. You told him if it was fooled with you would fix him? A. Yes.

MR. EWING: Mr. Henry, what did you have reference to by saying that you would fix him? Did you mean financially, or otherwise? A. No, sir; I meant otherwise. At the time that he showed me that note, and said that, I says, "He be damned; if that bill is fooled with I will fix you."

MR. ELLSWORTH: Was that when he showed you the note? A. Yes. After he showed me the note I says, "I am watching that bill."

#### E. J. SMITH.

Recalled.

MR. T. K. NELSON: Did I come to you, Mr. Smith, and ask you to give me those letters? Answer—No; you did not. I did not testify to that, either.

Q. Did I offer you any inducement or say there was anything in it for you or for me, if you would stop that? A. No; you did not.

Q. Did I tell you that there was anything in it for you or for me? A. The conversation kind of drifted that way.

Q. What did I say? Did I say there was anything in it for me? A. I think you said it was important for you that you or Mr. Bulkeley should have the letters; something to that effect.

Q. Did I say there was anything in it for me in any way? A. You tried very hard to get the letters.

#### T. K. NELSON.

Sworn.

THE WITNESS: I was out in the hall there and I met Mr. Bulkeley, and Mr. Bulkeley seemed to be worried about it, as I told Mr. Smith. I says to Mr. Bulkeley—there were two gentlemen present, but I do not like to drag any more in; one is a Senator over there—I says to Bulkeley, or Bulkeley says first: "What will this do; will this hurt my chances of passing the bill?" I says, "No, I do not think it will. They will pay no attention to what Smith has done." I says, "It don't amount to nothing." "Well," he says, "I think it will do me some harm." I says, "Mr. Bulkeley, I will go and see Mr. Smith—I have known Mr. Smith for a long time—and I will find out what he is going to do about this to-night." Then I went; Mr. Bulkeley did not ask me to. I will say, justifying Mr. Bulkeley, that he never asked me to do it; I went and done it of my own motion. I went and sent a Page in for Mr. Smith and he came out and we went upstairs, and I says to Mr. Smith, "What are you going to do to-night before the committee?" and he says, "What about?" "Well, about those Bulkeley letters; you have got some letters about Mr. Bulkeley." "O," he says, "there is nothing in them; they do not amount to anything." I says, "That is all right; what are you going to do to-night?" I says, "Are you going to do anything further about it?" He says, "No, there is nothing in that;" and he told me that they would not amount to anything, and that there would be nothing done about it, and I left Mr. Smith, and that was all that was said. I never said there was anything in it for me or anything of the kind. When the Assembly adjourned here, I met Mr. Smith and we walked down the street and commenced to talk about a different matter. I asked him what was getting into his head to do this. I asked also in regard to Mr. Falk and Mr. Shaen here, what the trouble was between the parties at the desk. That was what the conversation was drifting to. He then stated matters in regard to Mr. Falk and Mr. Shaen that I am not here to testify to except I am asked.

MR. FALK: I would like to have you testify to it, Mr. Nelson, if he stated anything regarding myself? A. Well, I have got to testify in regard to myself first. I never asked Mr. Smith to give me those letters; never told him there was anything in it, because Mr. Bulkeley never asked me to do it, and never promised me anything of the kind.

MR. ELLSWORTH: So you simply went to Mr. Smith as a matter of friendship for Mr. Bulkeley to get those letters if you could? A. I never asked for the letters; no, sir. I never wanted to get the letters. I asked Mr.

Smith what was in the letters, and Mr. Smith said it did not amount to anything, that there was nothing in them.

Q. If you did not want to get the letters what occasion was there for your going to Mr. Smith at all? A. I asked Mr. Smith what he intended to do to-night—I will state why: because I know Mr. Smith always tells falsehoods; I have known him for years and I would not believe him under oath—that is why. I did not know but what he would testify to something in the evening, and I told Mr. Smith to tell the truth; I will ask Mr. Smith if I did not tell him to tell the truth.

MR. SMITH: Yes.

A. I asked him to tell the truth, and that is all I wanted him to tell.

Q. Then you went there to see Mr. Smith to see that he did not tell any lies? A. That is all. I wanted him to do what was right in regard to the matter, because I know what Mr. Smith is.

Q. Did you offer him any inducements? A. No, sir.

Q. None whatever? A. No; never mentioned that there was anything in it or anything of the kind.

Q. You never suggested to him that you wanted the letters? A. No, sir; I never did. I never in my life asked him for the letters. He told me there was nothing in the letters that amounted to anything.

Q. Is that the reason you did not ask him for them? A. No; I did not care about the letters; I did not want them at all; I had no idea of getting them from Mr. Smith, and did not entertain any such idea at all, of getting the letters. Mr. Smith testified here that we were going down and talking about this matter all the way down to the saloon. I asked Mr. Smith the question, I says, "What is the matter with you, Mr. Smith; what is getting into you?" Says I, "What is the matter with you and the boys this session?" Well, he says, "Those Sheeneys were going back on me, and they did not divide up," and he says he was going to give them away.

Q. He said he was going to give them away? A. Yes.

Q. Was it in those words? A. Well, yes; those words. I asked him what was the matter with him and the boys this session, and he says they were not going to get it all. He says, "Don't you think I am right?" I says, "Yes; of course you are." I wanted to find out what he was going to do. He says, "Don't you think I am right?" and says I, "of course you are right." They were not dividing up with him.

MR. ELLSWORTH: You thought there ought to be a fair division?

MR. EWING: In case Mr. Smith had stated that he was going to produce the letters before the committee that night, would you have made an effort to have got the letters away from him? A. There was no object in my getting the letters at all, because Mr. Bulkeley did not ask me to do anything of the kind, or anything for him at all; I did it on my own accord.

Q. Then you would have been perfectly willing for him to produce the letters? A. I did not care anything about it; I was not interested in the bill in any way at all, and took no interest in the matter.

MR. ELLSWORTH: Are you an old friend of Mr. Bulkeley? A. No; I never knew the gentleman before.

Q. Is that the first conversation you ever had with him about those letters? A. No, sir; I have had a conversation with him once or twice.

Q. Once or twice before? A. Yes.

Q. Any more than that? A. No, sir; that is all. I never met him until I met him at this session.

Q. You went and talked to Mr. Smith out of pure friendship to Mr. Bulkeley? A. Yes.

Q. A man that you never had spoken to but once or twice before in your life? A. Yes; I never asked him for those letters.

Q. What has been your business here? A. I have been here all this session.

Q. What was your business here? A. Nothing particularly.

Q. Engaged as a lobbyist in the halls here usually? A. No, sir.

Q. Are you interested in any of the bills in the House? A. No, sir; no bills, nothing at all.

Q. You have no business here at all? A. No, sir; I have been here in the Senate, I have been a member of the Constitutional Convention and also for the Senate for six or seven years.

Q. During this session of the Legislature you have been here most all this time about this Capitol? A. Yes.

Q. And you are not interested in pushing any bills before either the Senate or the Assembly? A. No, sir.

Q. Just simply as a looker on? A. Yes; I have always taken a great deal of interest in legislation. I have been a member of the Senate for five sessions.

Q. You had so much to do with our laws here that you thought this Legislature could not pass laws properly without your presence and assistance. Is that it? A. No, I had nothing to do. I am a mechanic by trade, and it was very dull in the trade, and I came up to stay in Sacramento.

Q. You can live a little cheaper here than you can in San Francisco, can you? A. Well, just as well.

H. McCausland.

Sworn.

THE CHAIRMAN: Mr. McCausland, did you ever hear a conversation between Mr. Smith and Mr. Bulkeley with regard to some letters, down at the Golden Eagle Hotel? Answer—Yes.

Q. Will you please state in as concise language as you can what that conversation was? A. It was very brief. Mr. Bulkeley and I were coming out of the hotel together, we came out of the office door and Mr. Smith was coming out of the barroom door, and we met. I was interviewing Mr. Bulkeley in regard to this matter.

Q. In regard to what matter? A. In regard to this matter here.

Q. This investigation? A. Yes.

Q. This \$17,000 matter you refer to? A. In regard to his bill, or the controversy between him and Smith. Something new, in other words. And as we came out of the door we met Mr. Smith, and Mr. Smith says, "Good evening," and we said, "Good evening, Mr. Smith," and Mr. Bulkeley says, "Where are those letters that you have got of mine, Mr. Smith?" Smith says, "I have got them." "Where are they?" "They are in a safe place." He walked away, and we walked off.

MR. EWING: That is all the conversation that passed? A. That is all.

E. J. Smith.

Recalled.

MR. ELLSWORTH: Mr. Smith, it appeared from the testimony yesterday, that S. B. 192, I think it was, with reference to the Adult Blind Institution, came from the Senate on the seventeenth of February, and improp-



erly, or accidentally, appeared on the printed file on the same day? Answer—On the same day; yes.

Q. Have you examined the printed files of the days preceding that to ascertain whether or not that was the first day it appeared on the printed file? A. Yes; I have.

Q. What did you find? A. That the only time it ever appeared on the file was that morning of the seventeenth.

Q. It never appeared on the printed file before that? A. Never, before nor after.

Q. Nor after? A. No, sir. I have also tried my hardest to get from the State Printer how it happened, but I cannot find out from him.

#### WM. T. HIGGINS.

Sworn.

[Mr. Ellsworth read from his memorandum the testimony of E. J. Smith, relating to W. T. Higgins.]

THE CHAIRMAN: Do you desire to make any statement in regard to that, Mr. Higgins? Answer—The only conversation that I ever had with Smith about this matter at all was about the time it was first talked about; that there was something wrong here, and that there would be an investigation of it. I was riding up in the car, and at the corner of Second and K—I cannot say whether I got in the cars on the corner of Second and K and met him in there, or whether he got in afterwards, but there we met any way—and of course it was the general topic of conversation, and I asked him: I says, "Smith, what is there about this?" Well, he said, "I do not know anything about it, except what Frank Ryan told me," and I asked him what Frank Ryan told him, and he said that they saw Falk at the file, and I understood Smith to say that he and Frank Ryan were both in the rear of the Assembly Chamber, and they saw Falk in the neighborhood of the file, and that Frank Ryan went up to him and asked him what he was about, and I said, "Well, what do you know about it? I understood," says I, "that you are the party that started this whole thing." He said, "No." I said, "What do you know of your own knowledge about it?" And he said he did not know anything, except what he heard from Frank Ryan; and then he commenced to tell me what he thought was Falk's purpose there, and I said, "Well, why did you not leave it to Mr. Ryan to do it and not venture any of your own imaginations about it, and let this fellow stand up, and whatever he has done, to explain it if he has done wrong." But instead of getting into a carriage, by the time we got through talking about it we were more than two thirds of the way here, because we were riding in a blue car coming here. I was on my way here, and whether he got in after I was in, or whether I got in and he was in there, I do not know, but I never talked to him about destroying any file. I did not understand how the file was made up. I did not know any more that the file could be destroyed then than that the Journal could be destroyed. In the published report of this thing—whether it was from the testimony or merely the subject of correspondence, I do not know—they have got my position in connection with the bill entirely wrong. I was opposed to the division of that county.

Q. What bill do you mean? A. I mean this bill that Falk was accused of cutting out of the file and putting up.

Q. The Glenn County bill? A. The Glenn County bill. Nearly all my

friends—Mr. Young and others—know that I was opposed to the division of that county, and that I am now.

Q. I do not recollect that there was any testimony here with regard to your position at all? A. Well, I say I do not know whether there was anything in the testimony about my position or whether it was merely the surrounding circumstances that made the correspondents of the different papers say that I had some interest in it.

Q. I think there was nothing in the testimony about that? A. I saw it in the published report.

MR. DAVIS: Then do you emphatically deny that you and Smith had any conversation in regard to the changing of that file? A. Most assuredly; I never suggested anything of the kind, and there was never anything of the kind passed between us. I just said exactly what I have told you, and that was all that was said in return: that Mr. Ryan was the only one that knew anything about Falk tampering with the file, and my telling him to leave out what Ryan knew, and for him not to speculate about it nor give any of his views about what Mr. Falk's intentions were.

MR. SMITH: Mr. Higgins, how long have you been acquainted with me? A. Well, I think I have known you here about the Legislature may be four or five years.

Q. Was there ever any trouble ever existed between you and I in any political way at all? A. I never had anything to do with you.

Q. And there was no reason why I should make any misstatements about you, was there? A. I do not think there is any more reason that you should do it about me than anybody else.

The committee here adjourned until the further call of the Chair.

THURSDAY, February 24, 1887.

#### HENRY SCHWARTZ.

Sworn.

SENATOR MOFFITT: Mr. Schwartz, do you know Mr. E. J. Smith, Assistant Clerk of the Assembly? Answer—I do.

Q. The other evening at an investigation of this committee Mr. Smith testified that on Friday evening last—and I will ask some member of the committee to correct me if I misstate it—he and myself had a conversation somewhere in the Capitol—I forget what place it was—in which I said in a voice loud enough to be heard up to the Speaker's desk—it must have been in the Assembly Chamber—"No, I will not give you a cent; you have beaten yourself out of \$75, and I am beaten out of a couple of hundred." Now, I would like to have you state if that is true, and if you know anything about it at all; if you know of my meeting Mr. Smith; when and where, and tell all you know about it? A. I did not hear anything of the kind. It was impossible for me to hear anything of the kind, because I was not here Friday afternoon at all. I was in the Capitol here about half-past eleven in the morning and left and went down and went to lunch.

Q. Then it would not be Friday afternoon that that occurred? A. No, sir.

Q. Were you here at any time on Friday? A. Yes, Friday morning.

Q. Did you see me meet him at any time Friday morning? A. No, sir.

Q. Did you see me meet him at any time on Thursday? A. I did not; I did not see you speaking to him.

Q. Do you know him when you see him? A. Yes, I know him very well.

Q. Well, if I was to make such a remark as that in a loud, boisterous way in your presence would you be very liable to hear it—your hearing is good? A. Yes.

Q. And you know him well? A. Yes.

Q. And you know me well? A. Yes.

Q. Now, Mr. Schwartz, I would like to ask you some questions in another direction; do you know E. J. Smith well? A. I do know him.

Q. How long have you known him? A. Oh, I have known him six or seven years.

Q. He lives in San Francisco where you do business? A. Yes.

Q. What is his reputation in the community in which he lives for truth, honor, veracity, and reliability? A. It is very bad.

Q. Do you know anything about it? A. Yes.

Q. State to the committee all you know about it without being interrogated? A. Well, I have heard Mr. Ackerman—

Q. Mr. Ackerman, the lawyer? A. Yes.

Q. The one that Governor Bartlett appointed the other day? A. Yes. And Mr. Agnew and Mr. Louis Kaplan, who used to be Registrar of San Francisco, I heard discuss his character; and every one of them said to me that they would not believe him under oath.

Q. Did they have anything else to say about him; did they say anything specific about him? A. Yes; Mr. Ackerman told me that Smith accused him of wanting a bill advanced that he was dead opposed to.

Q. He has corrected that since? A. And Mr. Kaplan—

Q. Mr. Kaplan is a disinterested party? A. Mr. Kaplan told me that while he was Registrar, Smith used to come out there, and all their trouble in the office—a good deal of it—was brought on by Smith trying to have people registered that were not entitled to registration.

Q. Trying to get men on the Register falsely? A. Yes.

Q. Do you know Enos, the Labor Commissioner? A. Yes.

Q. Did you ever hear anything in connection with any forgery charges? A. Not from Mr. Enos. I have heard Mr. Ackerman speak of that.

Q. What does Mr. Ackerman say with relation to the manner in which Mr. Smith has connected him in this thing? A. Well, he said he never spoke to him at all; never saw him in regard to that.

Q. Never spoke to him under any circumstances? A. No, sir.

Q. Does not know him when he sees him? A. Never seen him at all.

MR. FALK: Mr. Schwartz, would you please state what, if you have anything to say regarding me at all? If I worked for you and what my character is? A. Mr. Falk has worked for me off and on for the last year, and resigned his position to come here. He would have been with me to-day if he had stayed. I found him always faithful and honest in every shape or manner. He has had charge of my cash department in the wholesale business, and his books and everything else are just as straight as any one would want.

T. B. MORTEE.

Sworn.

SENATOR MOFFITT: Mr. Morte, what is your occupation? Answer—At present I am Clerk of the Sergeant-at-Arms of the Senate.

Q. You are responsible to me in no way for your position? A. Not that I am aware of.

Q. Well, I simply bring that in to show that you are disinterested. A. Yes.

Q. I want to know if you know E. J. Smith? A. I do.

Q. He is the Assistant Clerk of the Assembly? A. I know him very well.

Q. Did you ever have any conversation, or did you hear Mr. Smith say to any one anything about me, in connection with this investigation; and if so, please state what it was to the committee, and who was present? A. Well, there was one morning in the Peerless Saloon. As I was coming up towards the Capitol, I stopped in there, and the porter was behind the bar. I wanted a little morning nip before I came to my duties, and I did not want to ask the porter, and I waited for Mr. Chenowith. In the meantime Mr. Smith came in and spoke to me, and said, "Come on and take something." So the porter made up the beverages, and as Mr. Felix Carles was standing near the lunch table, and Smith entered into a conversation with me, wherein he stated that he had done with politics; that he had been appointed Purser, I think, on the "Mariposa." He said that, in fact, he was going to give politics a wide berth. He further stated that the duties of Purser were very convenient to him, as he had always been a freight clerk. I says: "When are you going to leave?" He says: "I am going to throw up the position very shortly. But," he says, "before I go, I am going to make it damned hot for some of these fellows up there;" and he says: "To begin with, John Wilkins." And he says then: "I am going to commence at the Sheeneys on the desk, and I will burn some of them up;" and I says: "Well, are you going to touch over on our side of the house?" or something to that effect, and he says: "Yes, I am going to burn up that damn big—" I think he called him "supe from Alameda"—"supe," or "super"—something like that. "I have got it in for him, and I intend to burn him up." I says: "Who do you mean—Moffitt?" He says: "Yes;" and I says: "Moffitt is a pretty good sort of a fellow." He says: "He is no good—no good at all," just like that. I believe that is about the end of the conversation. In fact, he went into particulars, telling me the difficulties he had with Wilkins.

Q. Did he say anything about trying to borrow money from me? A. I think he said you were no good; you would not do to depend upon. He had it in for you.

Q. He had said he had a grievance in for me? A. Yes.

Q. Did he say anything to you that might lead you to infer what he had in for me? A. No, I just thought probably some kind of disagreement; I did not know what exactly.

Q. Well, then, it was evident that he had some feeling in the matter? A. Yes; as he expressed it, "I am particularly down on the Sheeneys at the desk, and that big supe from Alameda." And then he said that there were several in the House—in the Assembly.

Q. Did he say anything about anybody refusing to do him a favor by not letting him have money, and because they would not do this favor that he had it in for them? A. Well, he said he had a grievance—I do not know the nature of it. In fact, I would not have paid much attention to it unless this exposé had been made.

THE CHAIRMAN: Did you understand him to mean Senator Moffitt? A. He mentioned his name.

SENATOR MOFFITT: What did you say the name of that other man was? A. Felix Carles.

Q. Is that the small man they call Frenchy? A. Yes. Mr. Carles is one of the attachés of the Senate, and at that particular time our relations were a little bit strained—Mr. Carles, and mine—and that is the reason he did not join in the general conversation, I presume.

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FELIX CARLES.

Sworn.

SENATOR MOFFITT: Were you in the Peerless Saloon at the time this conversation took place that Mr. Mortee has referred to? Answer—Well, I do not know; I was in there one morning some time last week.

Q. Was Mr. E. J. Smith there? A. No, sir; it was only two men—a man talking to him—I do not know his name; he is a man with a black mustache.

Q. Do you know Mr. Smith? A. I know the man if I see him. I found out that he is the man since. I did not know his name before.

Q. Was he there at that time? A. He was talking with that man there, and there was a Chinaman there.

Q. There was a Chinaman there? A. Yes; there was a Chinaman there.

Q. Did you hear any of the conversation that took place? A. Well, I was at the lunch counter, and I heard this remark, that he would see to this man there; he says, "I will fix that big supe from Alameda, Moffitt;" and he said, "I will get even on him." That is all I heard.

Q. Well, you would know that man again if you saw him, that said that, would you? A. I would know him.

Q. You say you do not know Edwin J. Smith? A. I do not know his name.

Q. But you would know that man, that made that remark, if you saw him? A. Yes; I would know him.

Q. You did not hear anything else, did you? A. No.

THE CHAIRMAN: What was your business in that saloon? A. I was there to take a drink.

Q. What is your regular business or employment, if you have any? A. I am Gatekeeper of the Senate.

SENATOR MOFFITT: Did you ever have any conversation with me at all about Smith? A. Never. They asked me to come over this morning, and I did not know what for, or anything else.

THE CHAIRMAN: Is the man you saw in the saloon that time in the room now? A. That is the gentleman, there. (Pointing to Mr. Smith.)

Q. Will you please stand up, Mr. Smith? A. Yes, that is the man.

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F. D. RYAN.

Recalled.

SENATOR MOFFITT: You know E. J. Smith, of course. Answer—Yes.

Q. I simply want to ask you if you would believe him under oath, from what you know of him? A. I do not know; that is a pretty hard question to ask.

Q. Do you know what his reputation is in that regard? A. Well, I must say, with me his reputation for truth and veracity has been pretty good. But I will tell you, Ed. is like this: sometimes he says a good many things that you have got to take with a good deal of latitude.

Q. What is his general reputation? A. I would not want to say that in

a matter of importance he would not tell the truth. I would not want to say that, Mr. Moffitt.

Q. Do you know what his general reputation is in the community in which he lives for truth and veracity? A. Well, I do not know the community in which he lives.

SENATOR MOFFITT: I simply want to state to the committee that I subpoenaed Mr. Ryan on the strength of a conversation we had yesterday. A. Well, we were talking yesterday, Mr. Moffitt, about these things, and I did not expect to be put upon my oath to say that Mr. Smith was an untruthful man, because I do not know it.

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SENATOR P. J. MURPHY.

Sworn.

SENATOR MOFFITT: Senator, do you know E. J. Smith? Answer—Yes, I do.

Q. He lives in San Francisco, does he? A. Yes, in my district.

Q. You live in San Francisco? A. Yes.

Q. He lives in your district? A. Yes.

Q. You are a newspaper man there? A. Yes.

Q. And mingle around with a good deal of people? A. Yes.

Q. Now, Senator Murphy, what is the reputation of E. J. Smith in the community in which he lives for truth and veracity? A. I think it is bad.

Q. You think it is bad? A. Yes.

Q. Is he generally regarded as a liar.

THE CHAIRMAN: That answer covers all those things.

SENATOR MOFFITT: I would like to ask Senator Murphy from what he knows and from what he has heard of him whether he would believe him under oath? A. That would depend upon the extent to which he was interested.

Q. Suppose he was interested to any amount of money, would you believe him under oath? A. No; I would not. I have known him around here.

Q. Now, who have you heard discuss his character, can you remember? A. I cannot name any individual, because these questions have been discussed for years. It has been discussed here.

Q. For years? A. Yes. He came up here in 1880, when the Workingmen were largely represented in the Legislature, and he was then notorious around these halls for drafting cinch bills for several.

Q. He has been in the habit of drafting cinch bills and cinching them? A. Yes.

Q. What are generally regarded as cinch bills? A. Yes. I found fifty or sixty bills in his handwriting of that class that I have just mentioned—that character of bills.

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W. A. ENNIS.

Sworn.

SENATOR MOFFITT: You are Clerk in the Surveyor-General's office? Answer—Yes.

Q. Under General Reichert? A. Yes.

Q. Where did you live before you came to Sacramento? A. San Francisco.

Q. While you were living in San Francisco did you know E. J. Smith; did you know him well? A. Very well; yes.

Q. I want to ask you, Mr. Ennis, what was his reputation in that community for truth, honor, and veracity? A. Well, as far as communities are concerned, of course I could not say. It is only among his friends—socially.

Q. What was his reputation in the community in which he was known? A. Well, it was bad.

Q. He did not have a good reputation for telling the truth? A. No, sir.

Q. Do you know anything about a presentation that was made to him because of his being an infernal liar? A. Well, we did not exactly call him an infernal liar. We called him a silver-tongued liar.

Q. Well, will you state that circumstance to the committee? A. Well, sir, we were engaged in the Assessor's office. I believe it was in 1880 or 1881—I disremember—and he had quite a reputation for fabrication, and at the expiration of our term of office we—I believe that I was one of them—drew up a series of resolutions, and got Captain John Moore, who was then working in the office, and who was a Clerk in the Senate, to present it to him in a very neat speech.

Q. Because of his being a silver-tongued liar? A. I believe that was the expression. It has been a long time ago.

Q. Did you ever hear of him being arrested for forgery while he was in the employment of Enos, a man who is Labor Commissioner? A. No, sir.

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J. S. WILKINS.

Sworn.

SENATOR MOFFITT: Mr. Wilkins, you are an officer of this State, are you? Answer—I am, sir.

Q. Prison Director? A. Yes.

Q. And being an officer of this State in the position that you are in, you are naturally interested in prison matters? A. Yes.

Q. Do you know anything about any bills that were on the Assembly File, or do you know anything about those bills in connection with E. J. Smith? A. Not of my own knowledge.

Q. You do not know anything of your own knowledge? A. No, sir.

Q. Well, what I wanted to get at from you is—and I do not know whether the committee care to hear that or not—the proposition that Smith made about General McComb to have him advance or put down certain bills on the file.

THE CHAIRMAN: If he made it in this witness' presence it would be proper evidence, but hearsay evidence from the outside would not be proper. A. I know nothing of my own knowledge.

SENATOR MOFFITT: Mr. Smith did not make that statement to McComb in your presence? A. No, sir.

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SENATOR FRANK MOFFITT.

Sworn.

MR. MOFFITT: I shall begin briefly by referring to the note. Mr. Smith and myself have been friends for about three years. I met him first in the Assembly two years ago and our relations socially have always been very pleasant. This year I noticed a bill upon the file—Assembly Bill No.

16; it is the opium bill. I know the bill very well, because the same bill was introduced in the Assembly two years ago. It is a notorious cinch bill. It passed by because of the sentiment in the proposition and got to Governor Stoneman, where it was vetoed at the instance of James V. Coleman and some other gentlemen. The records will show that this identical bill was vetoed. And when the bill was upon the file of course I read both files every day and became familiar with the bill and recognized it and commenced watching the bill. I noticed, though, that this bill while I was watching it kept getting up, kept getting up all the time, and of course, being around the Legislature, I know how those things are—there is such a thing as shoving bills along; it has always been done—and I met Mr. Frank M. Marston, who is one of the Clerks at the desk, and I asked him who the clerk was that had charge of the file. I do not think he told me. I think I asked some one else, or he may have told me; anyhow I found out that it was Smith, and knowing that it was Smith I went to him and called his attention to the bill and asked him how it was. He said that it might have been done. He said there were bills continually going on the Special File and it might have got there by mistake. So I intended to have a fight made in the other House against the bill and intended to have it watched. The first thing I knew one morning the bill was away up again. I went in to Smith and I accused him of having put the bill up. He said it was true, and that he had spoken to Henry about it. He said that he had spoken to Henry about the bill. That was the first that I suspicioned that Smith knew anything about the bill. I judged that from the fact that he and Henry had been conversing about the bill—and I do not say anything of a disrespectful character with relation to Mr. Henry—and then I went to him and I says: "Now, Smith, if you do not get that bill right down where it was again, why I will get after you." Well, he wanted to know what was in it. He struck me for some money. This was at the desk. I told him that I would see him outside. I met him outside and refused to give him money. All of this, gentlemen, was before the bill got to engrossment, and the bill had gotten to engrossment, you will remember by the evidence, on the tenth, I think it was.

Q. The tenth of February? A. Yes. I met Smith outside and read the riot act to him in pretty sharp terms, and of course I will say frankly if he had put the bill down seven hundred I should not have objected to it, because it was a bad bill, and I was interested in its defeat. Of course when he began to tread on my corns and shove it up, I became exercised. I told him that he should put it down in its proper place. The next morning when I got to the Senate Chamber I found out that the bill had gone still further up, and I wrote a note to Smith, which is this note, the authorship of which I acknowledge.

Q. That was the note introduced and marked Exhibit "A?" A. Yes. I wrote him the note to know why he was jamming this thing up. I received no reply from him. The statement that he sent me a letter, is false, or I did not receive it. I went into the Assembly and walked right up to the desk where he was and spoke to him, and then I understood him to tell me for the first time that he was satisfied if he could get the bill along there was something in it for him and there was nothing in talking to me, and that I should not bother with it; that if I wanted to kill it very badly that I could kill it in the other House—and he put on a kind of a poor mouth, and I left him. That was all the conversation I had ever had with Smith directly or indirectly on the opium bill. About a week ago, or about last Thursday, I think, to speak accurately—I have notes here, I think—

about last Thursday I noticed a bill on file, an appropriation bill that did not properly belong there. I think I wrote a note to him on that; I do not know. Either that or I went in and saw him.

Q. Is that the Senate bill? A. It was Senate Bill 192.

Q. Is that the one that was on our file marked as Senate Bill? A. Marked as Senate Bill, and which your file represented as having come from the Finance Committee, which committee does not exist in the Assembly. It is a bill that the title was incorrectly upon. It was not as it passed through our House at all. Not only the amount of money was wrong, but the name and the title was wrong—the title was wrong. I went in and spoke to him about that bill, and asked him how he got that bill there, and he said he did not know; and I believed him, and I believe that he was honest in the matter; and he said that the bill must have gotten there by mistake of the printer. After having conversed with him awhile at the desk with relation to this bill—

Q. It is the opium bill you are speaking of? A. I am speaking of No. 192. I was interested in that bill, and of course was naturally interested in its progress, and its being in this condition was annoying, anyhow. I asked him how it came there. I knew that the progress of the bill was not going to be all smooth—its progress was not going to be smooth. I spoke to Smith about it a little while, and he wanted to know at that time if there was any chance for him to get any money out of that. I think he said that loud enough for somebody to hear it; I think he said it jokingly, because if he intended to say a thing of that kind for corrupt motives, I do not think he would say it in the loud tone of voice that he did, and I think Mr. Marston heard it, because he sat right next to him. At any rate, I just make this statement to show that he asked for money all the time. Now, in relation—there are other things I won't dwell upon—but in relation to his proposition in regard to a remark that I made to him in the presence of Henry Schwartz, I want to state that it was not on Friday that I met Mr. Smith and that he asked me for a loan of \$5, but I think it was on either Wednesday or Thursday. He is right when he says it was in the Assembly Chamber; it was in the Assembly Chamber. I think that he was inside of the railing. I was just coming in. He stepped up to me and wanted to know if I would lend him \$5. I am very positive it was \$5. And at that time, in a very loud tone of voice, I replied to him, "No;" and I do not know what I said; I may have said that I won't give you a cent, or I have not got any more money to lend, or I am not in the lending business; but that portion of the statement, that "you have lost \$75 and beat me out of \$200," I want to deny in toto, from top to bottom. I have explained everything that concerns me, now, and I would be pleased to hear from the members of the committee.

THE CHAIRMAN: Mr. Moffitt, that note that you speak of as having written to Smith, did that have reference to Bill 16 or Bill 192? A. It had reference to Bill 16. My idea in sending the note was first, as I tell you, I was satisfied that he was shoving the bill up as he subsequently admitted to me, because he thought there was a chance to get something out of it if he got the bill along. My object in writing the note to him was for the purpose of telling him to put it down where it was. That was all I wanted, because I was not satisfied that the bill was far enough down; and by the machinations of Mr. Smith, or some one else, the bill is now at the head of the Third Reading File.

MR. ELLSWORTH: Mr. Moffitt, have you ever examined the Assembly Files, or had you at that time when you wrote the note, so that you could say that the bill was below its proper place on the file? Did you know

that from a careful examination of the file yourself? A. I never found a bill below its proper place.

Q. I mean above its proper place? A. Yes.

Q. How did you arrive at the conclusion that it had been pushed ahead? Did you examine the Journal to see whether it had been taken out of its proper place by order of the House, or did you examine to see what other bills had been disposed of ahead of it? A. No, sir; I did not examine the Journal. I watched the file. I received the Assembly File in the Senate every day; and as I said before, I was familiar with the bill. It passed the session two years ago and was vetoed by the Governor under the circumstances of it. I knew something about it, and I was familiar with the bill and was watching it.

Q. Can you tell by an inspection of the files whether a bill was in its proper place? A. I can come pretty near telling.

Q. By comparing it with other records of the House? A. I think I can. I noticed that the bill kept getting up, kept getting along, and other bills in the neighborhood of it were not getting along, and I am satisfied if the bill had been taken up out of its order that Assemblymen who were watching the bill would have notified me, for there certainly would have been a fight upon it, and the merits and demerits of the bill would have been discussed on the floor. I do not think there was anything in the Journal. I think I would have known that by word of mouth.

Q. I noticed that Assembly Bill No. 16 was below its place on the file but I found out it was all right? A. Probably you are thinking it occurred the way I thought it did. I was watching the bill and I am pretty well satisfied that the bill was continually being jammed forward, and my idea was for him to get that bill down to where it belonged. I want to state something else to the committee. I think I wrote Smith a note on Assembly Bill 192. I think I wrote him two notes in regard to this Home for the Adult Blind bill. I think I wrote him a note asking how that bill came to be there. I state that so if he brings forth another note that will be the way it was.

CHARLES L. WELLER.

Sworn.

SENATOR MOFFITT: Mr. Weller, you know E. J. Smith? Answer—Yes.

Q. You live in San Francisco, do you, Mr. Weller? A. Yes.

Q. You are a lawyer there? A. Yes.

Q. Do you know what Mr. Smith's reputation is in the community in which he lives for truth, honesty, veracity, and sanity?

THE CHAIRMAN: That is objectionable.

SENATOR MOFFITT: I will bar the sanity proposition. A. I do not know as I do. The only way I know is, I have seen him out at the City Hall there while I was City and County Attorney. He was pointed out to me.

THE CHAIRMAN: Do you know what his reputation is in the community in which he lives for truth and veracity? A. Well, I was answering that in my own way, Judge. I was going to say—

MR. ELLSWORTH: The question is, do you know his reputation for truth and veracity in the community in which he lives? A. I have heard it discussed.

Q. Well, do you know what his reputation is for truth and integrity in the community in which he lives? A. I imagine I do if I heard it discussed.

SENATOR MOFFITT: You say you heard his reputation discussed? A. Yes.

MR. ELLSWORTH: The question is, whether you know his reputation for truth and integrity, or not, in the community in which he lives? A. Yes, I know it.

SENATOR MOFFITT: What is it? A. Bad.

Q. Who have you heard discuss his reputation; can you recollect? A. Well, I know a good many clerks around in the City Hall, and they were discussing it there.

Q. In what regard did they discuss it? A. Well, it was this matter in the Assessor's office that had been spoken of, and they did not blame him particularly because they did not think he was very responsible. He was liable to go off on tangents.

MR. ELLSWORTH: What matter do you refer to as occurring in the Assessor's office? A. There was some presentation made to him I believe—something of the kind, and the clerks around the Hall were discussing it.

Q. As a silver-tongued liar or something of the kind? A. Yes; I think that was it.

Q. How long ago was that? A. 1881, I think, five or six years ago. I was Assistant District Attorney there from 1882 to 1884. I think it was before that sometime. I am not quite certain of the time.

Q. That is what you refer to when you speak of the talk among his fellow clerks about the matter? A. That was the one particular case. And then there were others about his excitable temperament, etc.

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SENATOR FRANK MOFFITT.

Recalled.

WITNESS: Now I want to make one statement with relation to Bill No. 16. I want to state precisely to the committee what bill that was, so that they can see wherein one was intentionally interested in it. My object in doing this is to show that all the money interest is on the side of pushing the bill forward. It should be called a bill to deprive the United States Government of several hundred thousand dollars a year revenue, and to create a corruption fund to encourage smuggling. I objected to the bill, the only result of which would be to divert the vast sum now paid as duties on opium into the hands of Chinese smugglers, to be used in corrupting officials.

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GEORGE GOODMAN.

Sworn.

THE CHAIRMAN: Do you desire to make a statement before this committee in regard to anything that has transpired, Mr. Goodman? Answer—Yes, sir. I was told yesterday that I would be subpoenaed in regard to this matter, if I had any evidence against Mr. Smith about his writing letters or sending dispatches. I want to make a statement in regard to that. When the bill for laying artificial stone pavement around the Capitol was introduced, a few days afterwards I asked Mr. Smith whether he could send me a copy of the printed bill, as I had to go below. He sent me a copy, but he sent me a copy of the wrong bill. It was an appropriation of \$2,000 for laying pavements east of the Capitol grounds. I knew positively that the bill that called for a pavement called only for \$5,000, so I

knew that was not the bill; so I wrote him a few lines and told him there must be a mistake about that. He sent me a copy of the correct bill. I then came up there, and this is all I have in my possession—this copy which he sent me. [Presents the bill to the Chairman.]

MR. ELLSWORTH: This is Mr. Taylor's bill, No. 472, introduced February ninth, and relates to walks to be constructed of concrete, and there is a note here on top, "Made a mistake." This is the bill recorded for passage and now on file; this is your handwriting, Mr. Smith?

MR. SMITH: That is my handwriting.

MR. ELLSWORTH: That was on the bill when you received it? A. That was on the bill when I received it.

Q. Did you ever receive any letters or telegrams from Mr. Smith other than the one you have stated? A. No, sir.

Q. Are you the owner of a patent for laying walks, or have you the control of a patent for laying this concrete or cement walk? A. We have a patent, but we have no control of the concrete walk altogether. There are a great or any other parties in the field that are laying concrete pavements.

Q. Are there any other parties in this State that could compete with you, or any other person connected with you, for laying these cement walks, with regard to this particular patent? A. Yes; not with regard to the particular patent that we own, but there are a great many that lay artificial stone walks.

Q. I mean the walks that are now laid under your patent, or the patent under which you act, are they not? A. Yes, sir.

Q. This bill is to lay down walks in a manner like these walks are. Is there any company or party of men that could compete with you in laying down walks in the same manner like these walks? A. I will state that two years ago—I think it was two or four years ago, I am not certain whether it was two or four years—there was a bill introduced to lay part of the walk around the Capitol.

Q. This bill is to lay down walks under this patent, and in the same manner like these walks are. Now, my question is, can any other company except your own company compete with you in laying down these walks, under this bill? A. There were five different companies all on the same kind of work two years ago.

Q. This bill provides that the walks are to be constructed of concrete and laid down in a manner like and of a quality in workmanship equal to the concrete walk already laid down in front of and westerly of the Capitol? A. Yes, sir.

Q. These walks in front of and westerly of the Capitol were laid down under the patent which you are interested in? A. Yes, sir.

Q. Could any one not interested in that patent or who had no authority to lay walks under that patent take the contract to do the work under this bill? A. Yes, sir.

Q. Under this bill? A. Yes; under this bill.

Q. And it would be laid down in like manner as this is laid down here? A. Yes, sir.

Q. Have not you always claimed that any one who attempted to lay a walk in a manner like that walk is laid, unless they did it under the authority of the owners of that patent, were violating the patent? A. That is if they insert tarred paper.

Q. Is not there tarred paper inserted in these walks? A. Yes, sir.

Q. Can any one make a walk under this bill if it should become a law without inserting tarred paper between the blocks? I ask you now whether it would not require that tarred paper to be inserted between the blocks



if walks were laid down in accordance with the provisions of this bill?  
A. It was not so held three years ago.

Q. It was not so held? A. No, sir.

Q. That is your understanding of the way it should be held? A. Yes, sir.

THE CHAIRMAN: Did you lay down the walks two years ago under this appropriation? A. No, sir.

Q. Were you interested in laying these walks around this building; were you in any way connected with it? A. Yes, sir; most of them were laid in that way.

MR. ELLSWORTH: With tarred paper between the blocks? A. Yes, sir.

Q. Laid under what is known as the Schindler patent? A. Yes, sir.

Q. Can any work be done in accordance with the terms of this bill should it become a law, without it was done under the Schindler patent?  
A. That is what I have attempted to claim; I have always claimed that it could not be done except under the Schindler patent.

Q. Did you attempt to hold it by law suit? A. Yes, sir.

Q. Where they used tarred paper? A. Where they used tarred paper.

Q. Have not the decisions of the Court always been that where tarred paper was used that the Schindler patent was established? A. Yes, sir.

Q. Except it was laid by any one interested in that patent? A. Yes, sir; the Courts have even decided that where it is laid in detached blocks without any tarred paper it was an infringement.

Q. If the cut went clear through the block and some other substance was used besides tarred paper, then they decided that it was an infringement?  
A. Yes, sir.

Q. Then how could any one else compete with you in laying walks in front of this Capitol? A. It was done some two years ago; there were several parties who did it then.

Q. Did you sue these parties for infringing on your patent? A. Here.

Q. Yes. A. No, sir; we did not.

Q. Two years ago you said that work was done in laying sidewalks where tarred paper or other substance was placed between the blocks; is that so? A. Two years ago, yes.

Q. What walks were they? A. Outside on the walks here.

Q. Around this building? A. Yes.

Q. Did you claim at that time that it was an infringement on your patent? A. No, sir; I did not claim that it was an infringement on my patent. Before the contract was let to the man he came to us and made arrangements with us to insert the tarred paper on one joint only; *i. e.*, the long joint, for the reason that the State Capitol Commission—it was proven to them that if it was laid in this manner, without any tarred paper between the joints, that it would crack, and they went to the contractor and told him that if he could make arrangements with us to have the tarred paper inserted, to do so.

Q. Then the contractor was compelled to come to you, and get permission to lay your walk? A. Yes, sir; he did.

Q. Then how could any man conform to that bill without first obtaining your permission to lay that walk. How could they compete with you in the contract? A. If a man understood it he could do it.

Q. Then there is a way to get around your patent, if they are able to find it out? A. Well, they have found it out before.

Q. Did you say the contractor was compelled to come to you and pay royalty before he was allowed to put these walks down? A. Yes, sir.

Q. Have you any objection to telling us how a man could get around your patent? A. No, sir; not at all. A man can lay walks just exactly

like this bill is drawn up to call for, with material the same and the same workmanship as that already laid down around the Capitol grounds, without infringing on the patent, but the walk would be a perfectly useless one, because it would crack, undoubtedly. Wherever a pavement is laid under what we call the Schindler style, without a joint is split, it will fall away and crack across it, even if the material was good; and the pavement would last, yet it would be an unsightly pavement.

Q. Then it would not be in workmanship and manner equal to this?  
A. The same kind of work may be used, and they may use the same material in doing the work, yet they cannot prevent the cracking; the work would look the same when it is finished, yet at the same time, in the course of six months or a year it would show cracks.

Q. Mr. Goodman, in this case there is no cut going clean through the block, is there? It is not in detached blocks? A. In the other way, no.

Q. In your way, the blocks are all detached? A. Entirely.

Q. And they have tarred paper between them? A. Yes.

Q. In this method, which you say is a method of avoiding the patent, the blocks are not detached; there is only a little cut on the top, is there not? A. They can be cut—often they are cut—half way through.

Q. However, the cut does not go clear through? A. No, sir; not entirely.

Q. So that the bottom of the pavement is solid? A. Yes; solid.

Q. That would not be laying the walk in the same manner as these walks are laid? A. It would be in the same manner, but I don't think that it is just the same thing.

Q. As I understand, one is a solid pavement, and the other is the detached blocks with tarred paper between; do you call that laid in the same manner? A. No, sir; it would not be.

Q. Mr. Goodman, let me ask you a question: Suppose these cement and sand, of which these walks are made, I presume, were laid the width of this room, in one single block—simply putting down a board to form an edge, of course on the top of the walk they were laying; and after they had laid that cement the width of—whatever the walk might be, and simply marked on the top, by laying a straightedge and taking a trowel and marking the blocks for the purpose of making them appear as blocks—would that be in the same manner and workmanship as your walks are laid, with tarred paper between? A. No, sir.

MR. ELLSWORTH: One question more. Was this bill introduced in the Assembly at your request and instigation? A. Yes, sir.

Q. Whom did you request to have it done? Did you have any talk with Mr. Shaen or Mr. Falk about it? A. Not a word.

Q. Did you have any talk with Mr. Smith about it before it was introduced? A. I spoke to Mr. Smith about it because I have known Mr. Smith a long time; I knew him when he was a clerk for N. A. Wheaton, and I spoke to him about it, and he said that he would see about it.

Q. And he said that he would see about it? A. Yes, sir.

Q. Who drew the bill up? A. I drew it myself; that is, I dictated it to a friend of mine, who drew it up.

Q. What was Mr. Smith to do in the interest of this bill? A. Nothing at all.

Q. He said that he would see to it? A. Oh, I thought you asked me what he was to get.

Q. I asked you what he was to do? A. He was only to introduce it, that was all.

Q. To introduce it? A. Yes; I had to go home and I requested him to

go to Mr. Taylor or Mr. Carroll, and get either one of them to introduce it. He wrote to me that Mr. Taylor introduced it.

Q. Was that all Mr. Smith was to do in the matter? A. Yes; that was all.

Q. And there was no consideration to be given, no promise made to him in respect to it? A. No, sir.

THE CHAIRMAN: Mr. Goodman, suppose that book represents a walk ten feet wide—I understand you to say that you have no patent for the mixing of the cement and sand, but simply with regard to the division of the blocks? A. In the mode of laying the pavement, yes.

Q. The mixing of artificial stone is a very old thing, which no one could get a patent for? A. Yes.

Q. Now, suppose that this represents a room ten feet wide—your blocks are about two by three, as I have noticed them, in front of the Capitol? A. Yes.

Q. And suppose a mechanic would mix a concrete of cement and sand and put it a width that he could handle and work, in paving that, say three feet by any other width, as mechanics generally do in laying down these things, and would take a strip of board and lay the entire width of that walk, and mark it with a trowel just on top, a quarter of an inch, do you consider that an infringement of your patent? A. We did at first, but the Supreme Court decided against us.

Q. You got beat at that? A. Yes, sir.

MR. ELLSWORTH: Have you ever had any conversation with Mr. Falk with reference to this bill about the sidewalks? A. I never have.

Q. Did he ever say anything to you, or write to you, or telegraph to you? A. No, sir.

Q. Did he make any reference to the bill in any way? A. Not the slightest conversation. I do not know him only merely by sight, and I never spoke to him. That is just exactly what I wanted to state to the committee. I never spoke to him in regard to the bill at all, not a single word.

Q. Never had any communication with him or from him on the subject? A. No, sir.

Q. As to Mr. Shaen, did you ever have any communication with him or from him upon the subject? A. No communication at all; but when I came up here last Monday he approached me when I came into the Assembly Chamber. He came to me and asked me what I was doing there; whether I had a bill. I told him yes, and that is all I have ever spoken to him.

Q. He merely asked you if you had a bill here, and you told him yes? A. Yes.

Q. Never had any communication with him other than that on the subject? A. No, sir; and I want it distinctly understood, because the statement was made in the papers that he said there was a "divvy" in it. Now, I never in my life attempted to do anything of the kind with any person. You may construe the bill to be in the interest of the monopoly, or something of that kind, and I will wear that myself, but when it comes to the point of working on the integrity of a man, I emphatically deny it. I have never spoken to any living man to give him a cent to push a bill through, up or down, or to carry it through. This I solemnly swear to.

Q. Do you know Mr. Smith's character for truth and integrity in the community in which he lives? A. I have known him, I think, say, six or seven years, maybe eight years.

Q. Do you know his reputation for truth and integrity in the community

in which he resides; among his associates? A. Well, that is a hard question to answer. In some cases I have known that he did not tell me the exact truth.

Q. I am not asking you whether he told you the truth or not. I am asking you if you know his reputation in the community in which he resides, or among his associates generally? A. No, sir; I do not.

# FRANK MARSTON.

Sworn.

THE CHAIRMAN: Mr. Marston, some evidence has been introduced here in regard to a conversation that you had with Senator Moffitt in the barber shop. Will you tell what took place at that time? Answer—Well, this was some few days ago—I don't know how long ago—Senator Moffitt was in the barber shop and had just got up from the barber's chair; I was just starting out and he called me over to where he was, and says: "Frank, who runs the file?" I said "Ed. Smith." "Well," he said, "I want to see him." That was about all that was said, and I started out because I was in a hurry any way.

Q. That was all that was said? A. That was all that was said at that time.

Q. Simply a question was asked you? A. Yes, he asked me who handled the file, and I told him Smith.

Q. Did you ever hear any conversation between Mr. Smith and Mr. Moffitt at the desk in the House at any time? A. No, I never heard any conversation; I saw Senator Moffitt here at the desk one day, but I never listened because there are so many coming up here that I never pay any attention. I am busy writing on my books all the time.

Q. Do you know anything about the attempt to change the file? A. No, nothing; I was away at the time, and all I know is hearsay; I think that it was a day or two afterwards. I don't know one iota about that because I was away at the time.

Q. Do you know of any offers of money having been made at any time, or of any attempts having been made to change the files of the Assembly? A. Not of my own knowledge. I have nothing to do with the files, and a man can come up and talk for a half hour with Mr. Smith and I don't pay any attention to it, because I have become so used to that, having heard the members talk on the floor so much.

Q. You have nothing to do with the file? A. Nothing to do with the file at all; never handled it.

Q. You are the Journal Clerk? A. No, I am Assistant Clerk at the desk. I have the register there. The bills come first to Brandon, and he enters them on the book, and whatever that is I put it in the register.

Q. You register the bills as they pass? A. Yes, sir.

Q. If they compared your register with the bills as they pass through the House and there were changes in the file, could it be told from your books? A. No.

Q. You are not the Journal Clerk? A. No, I have nothing to do with that.

Q. Do you know anything in connection with this investigation that this committee ought to know? A. I do not know any one thing. No, sir; all I know, I know from hearsay.

Q. Well, hearsay is not evidence. A. Well, I don't know anything.

MR. SMITH: Mr. Marston, how long ago did you meet Senator Moffitt

in the barber shop? A. Oh, I should judge it was a week or two weeks from last Friday night. It was Wednesday night, I think. I was going to one of those Wednesday night parties they have—club parties—and I think it was Wednesday night. It was a week or two weeks from last night.

Q. Was it before this committee was appointed? A. Oh, yes.

Q. How long before this committee was appointed, do you suppose? A. Well, I don't know. It was before that time ten or twelve days, I should judge.

Q. Ten or twelve days before the committee was appointed? A. Well, I say about that time. Say a week or so from last Wednesday night.

Q. The next time you saw Mr. Moffitt, where did you see him? A. It was either the next day or the day following, I saw him come up to your desk, and saw him talk to you.

Q. Did he speak in a loud tone of voice or in a low tone? A. I could not say, I did not notice him until he was going away.

Q. After he left the desk what did you say to me? A. Oh, I in a joking way—

Q. Tell me what you said to me. A. I don't know what it was myself.

Q. You repeated it to me last night. A. I said to you, "Why don't you let me fix that with Moffitt." I said: "If there is anything in it I will get it out." You know that I was curious to find out what it was about.

Q. Then what did I say to you? A. I forget exactly the conversation now. You said I don't know about it, and I offered to bet something I knew about it. I was kind of joshing you to find out because I knew Frank very well and I wanted to find out what it was.

Q. What did I say to you? A. You said something and I told you that I would bet you five dollars that I did know, and then it kind of dropped.

Q. The next time you saw Mr. Moffitt, at the end of the desk, how long was that after that time? A. Well, I don't know that I saw him again; the only thing I saw was a letter which you addressed to him, and I picked it up, and you said it was private, and I laid it back there.

Q. What did I do with it? A. I don't know.

Q. You saw a letter addressed to Senator Moffitt a few days after that? A. No, longer than that. I don't know how many days after that it was. I could not say whether it was two or three days afterwards. I know I saw it some time afterwards.

Q. It was a letter addressed to Senator Moffitt and you wanted to see the contents and I would not let you see it? A. Yes, I will say that.

Q. At the time that Mr. Moffitt first came to the desk that morning that you say we had the josh, what was your opinion? A. Oh, I never thought anything. There are men going up there any time.

Q. When you asked me that, I refused to tell you what bill he was speaking about, did I? A. Yes, sir; I did not derive any information from you at all.

THE CHAIRMAN: Did you ever know what bill was being spoken of? A. I did not. I don't know only what I have heard since.

Q. You don't know what bill they were talking about? A. No, sir.

MR. SMITH: Whenever any bill was on file, and anybody drew my attention to it, all the boys knew it, did they not? A. If it is of a very serious nature they did, because you are a very loud talker, Ed., and you get excited pretty easy, and as I sit right opposite to you I can hear. I know that you are a kind of dictionary for all of us, because I am not posted much, and if there was a dispute about anything we would ask Mr. Smith about it.

Q. Well, Marston, do you remember one day Mr. Moffitt coming over to the end of the desk and commenced jawing at me for not doing anything, and I laid it on to you for giving it away, and I turned around and looked you in the face? A. I don't remember ever seeing Mr. Moffitt there but that day.

Q. You are positive of that, are you? A. I don't remember of seeing him there but one time at the desk.

Q. I never charged you with giving away the business to Moffitt at that time? A. No.

ALBERT HART.

Sworn.

Q. Will you state to the committee anything you know in regard to requests of any kind to advance bills? Answer—The only conversation that I ever had in my life with Mr. Smith in regard to that bill was one morning; it was in the Assembly Chamber, preparatory to getting my minutes, I said, "Ed., how is it, I see this bill one morning away up at the head of the file and the next morning it is always at the foot?" "Well," he says, "I have a bill of the same nature, but the Assembly is constantly changing bills, and that is the reason for its misplacement." That is the only conversation that ever transpired between myself and Mr. Smith on that or any other subject, and there was nothing said about moving bills or shoving bills up or down from places on the files in any way.

Q. You were merely making inquiries? A. Yes, sir.

A. E. BRUCK.

Sworn.

THE CHAIRMAN: Were you present and heard any conversation passing between Senator Moffitt and Mr. Smith, the Clerk of the Assembly? Answer—I was present when a few words passed between them.

Q. Will you please detail in as concise a manner as possible the conversation between these two gentlemen. A. I was sitting on the railing of the lobby one evening when Mr. Moffitt passed Mr. Smith and Mr. Smith spoke to him; I think asked him for some money, if my recollection serves me right, and some words transpired, I don't recollect just what they were now. I heard the remark made, "You have knocked yourself out of \$75 and me out of \$200."

Q. You heard the remark about \$75 and \$200? A. "You have knocked yourself out of \$75 and me out of \$200."

Q. Just tell us who made that remark? A. Mr. Moffitt made that remark, and that was the language.

Q. You say that Mr. Moffitt made the remark to Smith that he had lost \$75? A. No, sir; not lost. He said, "You have knocked yourself out of \$75 and me out of \$200." That is the best of my recollection.

Q. Knocked yourself out of \$75 and me out of \$200? A. Yes, sir; that is about the language.

Q. Do you remember about what time it was; how long ago? A. I think it was the latter part of last week.

Q. About the latter part of last week? A. Yes.

Q. Was Senator Moffitt alone at the time, or were there some other persons with him? A. My recollection is that there were several parties in the lobby at the time.

Q. Do you know any of these persons? A. I do not. I did not pay much attention to it. I was not thinking much about it. I did not notice who was about.

Q. Was that all that passed between Mr. Moffitt and Mr. Smith? A. I could not say now.

Q. That is all you heard? A. That is all I heard about the \$75 and the \$200.

SENATOR MOFFITT: When do you fix the time? A. My recollection is it was the latter part of last week.

Q. It might have been Thursday or Friday? A. Somewhere about that time of the week. Yes, sir; that was my recollection.

Q. Were you present at the meeting the other night when Mr. Smith referred to Mr. Schwartz as being present? A. No, sir; I was not. I have not been present at any of the meetings except the first.

Q. This is the same meeting that you referred to the other night, Mr. Smith?

MR. SMITH: Yes, sir.

SENATOR MOFFITT: This was in the lobby of the Assembly, was it? A. Yes, sir.

Q. Did I say this in a loud voice? A. Yes, sir.

Q. In the presence of several parties? A. Yes, sir.

Q. Did you know what I referred to? A. No; I had no idea.

Q. Do you know what Mr. Smith referred to? A. No, sir.

Q. You heard me refuse to loan him money, you heard that much of it, did you? A. I think you did refuse him.

Q. Did I approach Smith, or did Mr. Smith approach me first? A. I think he spoke to you.

Q. He approached me first, did he? A. Yes.

Q. And asked me for a loan? A. That is my recollection of it.

Q. And I declined to give him the loan? A. I think you did. I could not positively say, but I think you did.

Q. If I was talking in a loud tone of voice you could hear? A. Yes.

Q. Then something was said about \$75 and \$100 was there? A. Yes.

Q. Do you know what that \$75 or \$200—it was \$200? A. \$200, yes.

Q. Do you know what that \$75 or \$200 referred to at all? A. No, sir; I have no idea what it referred to.

Q. Did Smith tell you what it referred to, or what it had reference to? A. I don't recollect that he did, sir.

W. A. ENNIS.

Recalled.

THE CHAIRMAN: Is that your writing? Answer—Yes, sir.

Q. Will you read that letter, and the signatures? A. "We, the undersigned clerks in the Assessor's office, City and County of San Francisco, do hereby certify and voluntarily declare that the resolutions published in one of the daily journals of this city, descriptive of the alleged traits of character of E. J. Smith, Esq., were not intended for publication, and did not reflect the serious convictions of our minds respecting his general character. The purpose aimed at was simply to perpetrate a huge joke at his personal expense, prior to his announced departure for Sacramento; and lest the publicity already given should create a wrong impression we do therefore, of our own motion, cheerfully subscribe to the true construction which should be given the resolutions as published: Wm. H. Emil, Harry

Thorn, M. C. Southard, John T. Foley, A. C. Berthier, Henry C. Doyd, G. B. Mackrett, T. H. Douglass, M. F. Shaugnessy, Fred. J. Parcels, John T. Meagher, A. Small, A. Kronberg (212 Ellis Street), W. H. Barry, John J. Doyle, E. B. Gorman, C. B. Edwards, Chas. H. McGreavy, Alfred A. McGill.

"San Francisco, Cal., April 3, 1881.—Dear Ed: I send herewith a paper, the reading of which you will fully understand. I wish it distinctly understood that I never signed the original published in the 'Post.' I have used my best endeavors to have all the boys sign the paper, and you can have it published, but on condition that the names are not affixed. I have given my word that they shall not be published, and I sincerely trust you will bear me out. Trusting you will have all the prosperity that a boy like yourself deserves, I am yours, ENNIS.

"P. S.—You will understand that if our names should be published, it would jeopardize our position, so I trust to your honor that you will not use our names, should you see fit to publish the same. Now, Ed., I am seeing you through on this thing—do likewise by me. Yours, E."

Q. That is correct, is it? A. That is correct.

MR. SMITH: Mr. Ennis, did you testify this morning attacking my character for truth and veracity? A. Yes.

Q. Since that letter has been written, how many times have you seen me or heard of me? A. Oh, I have not seen a great deal of you except up in Sacramento, before I saw you in the Assessor's office.

Q. You did not see me from the time I was in the Assessor's office, in 1881, until you saw me this time in Sacramento? A. Oh, yes; I have met you several times.

Q. When did you meet me? A. I could not say.

Q. Continuously? A. No, sir; not continuously.

Q. When did you first see me after you wrote that letter? A. I could not say.

Q. When did you first hear of me? A. I heard of you a great many times.

Q. Was it within one year afterwards? A. I should judge so.

Q. Where did you hear of me? A. I could not say. I heard you were in Portland the last time I heard of you.

Q. Well, I want to know. Was it within one year after you wrote that letter that you heard of me? A. I could not say.

Q. What did you base your testimony on this morning, that you heard my character spoken of? A. I did not say. I told the gentlemen here—this gentleman here cross-examined me—I told him that in the community in which you lived I could not testify. I could only testify in regard to the place where I have known you in San Francisco—that was in the Assessor's office.

Q. At the time this letter was written? A. Yes, I remember distinctly—of course, I did not remember that letter, but now I remember distinctly about that letter. Mr. Smith came to me and several parties came to me and said if the letter was published in the "Post"—it comes freshly to my memory that Mr. Ed. Smith come to me himself about it, and I remember distinctly now that you said that you would lose a position that you were seeking here in Sacramento. I then says to the boys: "By Jove, it would not do to do anything to injure him in getting his position, and I, for one, do not propose to place myself in a position that would jeopardize any man from making a living." And on the strength of that I wrote those letters at the dictation and at the request of the Board.

Q. Mr. Ennis, have you accounted for that statement in that letter of

yours, "I herewith send a paper, the reading of which you will fully understand?" This letter was sent to me in San Francisco. "I wish it distinctly understood that I never signed." What did you mean by that in conjunction with what you have just said? You have it here, I never signed the original published in the "Post?" A. I never signed, did I?

Q. Then why did you take the interest in it that you did? A. I did not take any interest in it. I did it just as all the rest of the boys did in the office.

THE CHAIRMAN: Did you consider that the resolutions passed there, and which have been referred to here, was simply a matter of lark between the clerks? A. Now that this question has come up, I will just tell you the whole thing. Mr. Ed. Smith had been around several of the boys and got some money of the boys in the Assessor's office, and he had guaranteed on several occasions to furnish them with the money and to meet them at certain places, and the boys had been there at the places of appointment, and every now and then you would hear one of them say, "Where is Smith?" Another one would say, "What do you want?" Well, he would say, "He had an appointment to meet me here." And these things all combined, and other stories that were told around there about him, the boys got together and drew this thing up.

MR. ELLSWORTH: You say that you wrote this letter and got up this testimonial document that has been read here, at the suggestion of other clerks in the office? A. I did, yes; I did, most assuredly; and at the suggestion of Mr. Smith, himself. He came to me and he says, "This thing will hurt me," and he says, "I do not want to lose a job there," and he felt very sorry of it, and at the time I felt sorry over it, too, to think that anybody would lose a job. And at the solicitation of the other boys I drew up that letter.

MR. SMITH: Mr. Ennis, you have testified that all you knew about my reputation was this thing in the Assessor's office, and Mr. Weller testified that all he knew about my reputation was this act in the Assessor's office? A. Mr. Weller? I do not know the gentleman.

MR. SMITH: Do you know any of the facts of the matter upon which this letter was written and the resolutions were based, as to whether there was anything wrong about it? A. How do you mean?

Q. You say it was all a joke? A. No, I say that you were a man that prevaricated a great deal around the office, to everybody. You know that yourself, and you cannot deny those facts.

THE CHAIRMAN: Did the committee understand you, then, in saying that you wrote this letter and this paper, with a design of deceiving the people here, and giving the position to an unworthy man? A. If that construction can be placed upon it, why, yes. I would not injure any man, for a man is liable to prevaricate, as a matter of course. He came to us and said, "Of course, I will lose the position." A man is liable to reform, I cannot tell; I do not believe that every man is bad.

Q. Then you had no hesitation in getting up this paper and signing it and obtaining the signatures to deceive the Legislature or State officers in appointing a man to a position that you believed to be unworthy of the trust. Is that the way I am to understand you? A. No, I do not think you can understand it that way.

Q. Did you consider that paper to be stating the truth when you wrote it? Did you understand at the time you wrote that paper and this letter to be the facts and the truth? A. Well, I will tell you, if a man prevaricates on every occasion without an intention of injuring anybody, I would not consider that he was not responsible for holding a position. There are

different kinds of lies. A man can lie with the intention of injuring a man, and the man can lie just for the sake of lying.

Q. Then if this paper was a lie it would be a simple, innocent letter that might deceive the State officers or Legislature in appointing Smith. Is that the construction? A. Well, I did not know anything about the position that he was going to occupy or whether he had anything to do with the Legislature or not. That is, as far as he is concerned.

MR. ELLSWORTH: I thought you stated that you understood he was seeking a position as Assistant Clerk? A. As Clerk or Assistant Clerk, I do not know which.

Q. Then you knew it had something to do with the Legislature? A. Oh, certainly, undoubtedly, but what he had to do with the members I did not know at the time.

MR. SMITH: Is it not a fact, Mr. Ennis, that I was a candidate for a position at the Legislature? A. Only from what you told me.

Q. Are you not positive now that that letter was dated in April, 1881, and it was the extra session in Governor Perkins' term and I had resigned my position in the Assessor's office to come up here and occupy a position as Assistant Secretary of the Senate? A. I could not say.

Q. You stated that I was a candidate. How do you know that I was a candidate? A. You told me that you were a candidate. I have got your word for that.

Q. It was the extra session? A. I do not know whether it was the extra session or not; of course, you know better about that than I do.

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SENATOR MOFFITT.

Recalled.

THE CHAIRMAN: Do you think that this opium bill was raised out of its file? Answer—Yes, I do. I made that statement this morning.

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MRS. S. M. GILMORE.

Sworn.

MR. SMITH: You are my mother, are you not? Answer—Yes.

Q. Will you state the first position that I occupied when you took me from school? A. You were first clerk for Mr. Wheaton.

Q. Please state how long I worked for him? A. Well, really, I forget now; but you worked for him until I had to take you away on account of your health.

Q. What was my age at that time? A. You were fourteen.

Q. You took me away from him? A. Yes.

Q. For what reason? A. Your health was bad, and we had to send you to San José for your health.

Q. How long did I remain in San José? A. Well, I cannot just exactly recollect. I know you stayed there until you felt better.

Q. When I came back, where did I go to? A. Well, you came home, and Mr. Bell, President of the gas company, I went to see him—he had been an old boarder—and asked him if he could get a position for Ed. in some law office. He could not go back to school because his health was too bad. He said, "Yes, I will do all I can for him;" and he told him to come down to his office. He went to work for Mr. Wheaton.

Q. How long did I work for Mr. Wheaton before Mr. Scrivner went in with him? A. I think about seven years.

Q. After Mr. Scrivner went in partners with him how long did I work for Wheaton & Scrivner? A. I could not tell how long. You worked there until you left yourself.

Q. Can you tell when I left? A. Well, I could not tell; it was several years.

Q. Was it when I came up here to be Assistant Clerk of the Senate? A. I think you left there to come up here to the Senate.

Q. You have seen Mr. Wheaton several times since then? A. A good many times.

Q. How did he speak of me? A. Always spoken of you in the very best of terms. He told me that he was very sorry that you ever left him and went into the Legislature; and if he had stayed with him he would have been a different young man altogether; that he was a good, steady young man, and had intrusted him with all his money and everything while he was gone to Washington to attend to his business. And, of course, there is a great deal more that I cannot just recollect.

Q. Then, after I left Mr. Wheaton and came up here, I went to San Francisco. How long was I out of work? A. I do not know how long you were out of work.

Q. Well, following September, 1881, what happened? A. Well, I advised you to drop politics and get some place and go out of San Francisco.

Q. What did Mr. Gilmore, my stepfather, do? A. I spoke to Mr. Gilmore and asked him if he could not get anything for you to do, and he said he would try and do what he could. He made his trip and came down and I went down to meet him and Ed. went down, and when Ed. got aboard of the steamer I says to my husband, "Have you succeeded in getting Ed. a position?" He says, "I have if he will accept of it at \$50 a month." He says, "If he accepts of it he has got to telegraph right away." So I called Ed. and told him what Mr. Gilmore repeated, and he said, "I believe I will go." The steamer always remained five days. So my husband got him his pass and took him up to Portland and he went to work the second day after he arrived there, and he was thought a great deal of and I never knew of him doing anything wrong. Of course there are not any young men that do not do things that their mothers do not know.

Q. After I quit work, what company did I go to work for in Portland, Oregon. You came up and saw me once? A. Yes.

Q. What company was I working for? A. Oregon Railroad and Navigation Company.

Q. After I quit their employment did I immediately go to work for a branch of that company, called the Pacific Coast Steamship Company? A. Yes, as purser for their company, on the "Gipsy." I met you down at Astoria.

Q. What was the reason of my leaving the ship. Was it because I was discharged, or because the ship was ordered back to San Francisco? A. The ship was ordered back to San Francisco.

Q. And I was left in Portland? A. You were left in Portland; yes.

Q. If I had been discharged from any position, either in San Francisco or Portland, or in all the places that I have worked, for theft, would you have known it? A. I should certainly have known of it.

E. J. SMITH.

Recalled.

MR. SMITH: I will state that I never have been discharged from any position in my life. In every position that I have ever been in I have quit of my own accord, excepting the position on the Pacific Coast Steamship Company, and the ship was laid up, and, of course, that discharged me. I have never been discharged from any position in my life; I quit of my own accord. Now, in connection with this matter, I would like to read a few letters that I have had in my possession quite awhile. This is a letter from Wheaton & Scrivner.

[Mr. Smith here read the letters, copies of which are hereto attached.]

"Law office of Wheaton & Scrivner, San Francisco, March 23, 1878.—For fear the other letter might not be full enough, I send another. These letters put it on pretty thick, Ed., but they are none too strong so long as you stick to hard work and business, and don't get the 'big head.' I think you have too much good sense to do the last. But there are so many that I have known to get it when prospering, and on that account to break entirely down, that you must excuse my suggestions. Few young men have made a better beginning than you; you have done it by hard work and honesty, you can only continue successful by the same means. Never touch liquor, and never gamble a cent at anything. I am glad to hear that in Sacramento, as here, you have made good friends among good men. Yours, etc.,  
M. A. WHEATON."

(Marked "Exhibit H.")

"We, the undersigned members of the legal profession of San Francisco, having known Ed. J. Smith personally for the past four or five years, cheerfully recommend him to the delegates of the Constitutional Convention, for the position of Journal Clerk of the Convention. He is a trustworthy young man, and is capable of filling the position in a creditable manner: Hall McAllister, T. J. Bergin, E. B. & J. W. Mastick, John H. Boalt, Theodore H. Hittell, J. M. Coghlin, Len. Reynolds, Warren Olney, Ralph C. Harrison, Wm. H. Wells, C. R. Greathouse, Thos. B. Bishop, L. L. Skinner (two years), D. L. Smoot (two years), W. C. Belcher, L. Quint, C. H. Parker, Moses G. Cobb, A. P. Van Duzer, John S. Enos."

(Marked "Exhibit I.")

"We, the undersigned Judges of San Francisco, hereby recommend Ed. J. Smith to the delegates of the Constitutional Convention, for the position of Journal Clerk of the Convention, as he is well qualified to perform the duties pertaining to such position: Sam'l H. Dwinelle, Wm. P. Daingerfield, E. D. Wheeler, R. F. Morrison, Lorenzo Sawyer, Ogden Hoffman, Davis Louderback, James D. Thornton, Robt. Ferral."

(Marked "Exhibit J.")

"San Francisco, Cal., February 23, 1886.—Hon. Louis F. Holtz—My Dear Sir: My old clerk, Ed. J. Smith, informs me that you intend giving him a place in your office for a short time. I think you will find him worthy and capable of discharging any services you may require, and if you can give him a permanent place it will be duly appreciated by his many friends. Yours truly,  
J. J. SCRIVNER."

(Marked "Exhibit K.")



"Los Angeles, Cal., July 11, 1881.—Mr. Ed. J. Smith, San Francisco—Dear Sir: I take pleasure in saying you were Assistant Secretary of the Senate at its last session, and proved by the united judgment of your associates a competent and faithful officer. Very respectfully, your obedient servant,  
JNO. MANSFIELD."

(Marked "Exhibit L.")

"State of California, Executive Department, Sacramento, Cal., March 1, 1879.—Ed. J. Smith, Esq.—Dear Sir: Your letter of February twenty-seventh is at hand. It would give me pleasure to appoint you to the vacancy caused by the death of Robert C. Page, but I have promised his friends that I will appoint some one, whom they may name, who will contribute a portion of the proceeds of the office to the support of his (Page's) family, who are said to be in very indigent circumstances. Under the circumstances I could not do otherwise than accede to the request. Very respectfully,  
WILLIAM IRWIN."

(Marked "Exhibit M.")

"San Francisco, February 27, 1884.—Friend Holtz: Mr. Ed. Smith informs me that he has not been put to work, as you promised Mr. Smith and me you would do. I pray you to give him work. I have given him the assurance that you would certainly put him on March first. Do it for him and me (for God's sake) and for his sake. Please do not refuse. Yours truly,  
JOHN S. ENOS."

(Marked "Exhibit N.")

"Office of McAllister & Bergin, Attorneys and Counselors at Law (Hall McAllister, T. I. Bergin).—San Francisco, September 11, 1885.—William Alvord, Esq.—My Dear Sir: The bearer of this note, Mr. Edward J. Smith, is a candidate for a position on the police. I have known him about eight years. He is a good man, sober, industrious, reliable, and quite intelligent. He has been in a lawyer's office for ten years. I can recommend him as worthy of the position he seeks. Very truly,  
HALL McALLISTER."

(Marked "Exhibit O.")

FRIDAY, February 25.

#### TESTIMONY OF THOMAS AGNEW.

Sworn.

THE WITNESS: Mr. Chairman, I saw by the paper Sunday morning, I think it was—yes, last Sunday morning—that Mr. Smith, before this committee, made charges against me of offering him \$200 with reference to 122, I think that is the number of the bill. Afterwards he made a statement that he made a mistake; that the bill was 267. Now, in reference to either one of these bills: Bill 122 I knew nothing about until I met Mr. Wadsworth in my office, and he explained to me that the bill was his own bill.

MR. ELLSWORTH: Is that the Insurance Commissioner? A. Yes, he is an Insurance Commissioner. He is here now and will testify to the same facts. Now, in reference to Bill 267, as far as either one of these bills are concerned, I knew nothing about them until Mr. Wadsworth told me, and

Mr. Smith is mistaken when he said that I have spoken to him in reference to any insurance bill.

MR. ELLSWORTH: When did Mr. Wadsworth tell you about these bills. You say you learned about them from him, from Mr. Wadsworth, when was it? A. I met him here last Monday.

Q. Last Monday? A. Yes, sir; about Bill 122.

Q. After you had seen this notice in the paper? A. Yes, sir; Mr. Wadsworth was over making out a statement, and I met him.

Q. Did you ever have any conversation with Mr. Smith pending before the Legislature? A. Yes, sir.

Q. Did you ever have any conversation with him about any bill at all? A. No, sir; he is mistaken if he says so.

Q. You never offered him any money in reference to any bill? A. No, sir; I had no authority to offer anybody any money.

Q. The question is not whether you had any authority, but the question is whether you did? A. No, sir; I never offered him any. In the commencement these bills have nothing to do with the fire insurance companies; I am not in a life insurance company; I am Surveyor and Adjuster of the State Investment Insurance Company.

Q. Then you say that Smith's statement is wholly without foundation? A. He is mistaken.

Q. There is no foundation of any kind for it? A. No, sir.

Q. Have you had any talk with Mr. Smith, about anything at all—any subject whatever—since this Legislature convened? A. Yes, sir.

Q. Where? A. I came here on Wednesday night, the second of February, and I met Mr. Smith. I was looking for Mr. Lewis. Mr. Lewis is in our office.

Q. What Mr. Lewis? A. He is in the Assembly.

Q. Assemblyman Lewis? A. Yes, sir.

Q. Is he employed in your office? A. Yes, sir. I was looking for Mr. Lewis, and Mr. Smith came up to me. He and I have always been friends, since, maybe, two years ago—since the last Legislature, I think it was—and he called me by name and shook hands with me, and he said: "Hello, Agnew; what are you up here on?"—something to that effect. He says: "What are you up here on?" "Oh," says I, "nothing; I am looking for a man," and I walked away. I think somebody called Smith out at the time, and I walked away.

Q. That was all the conversation? A. Then last Thursday night I was down at the Golden Eagle and Senator Pinder and myself were speaking.

Q. You mean a week ago last night? A. A week ago last night. And Mr. Smith came up, and Mr. Cunningham was there; he used to be Assemblyman from Santa Cruz. Mr. Smith came up and we went up and had a drink, and Mr. Smith made a remark to me in reference to the way they were abusing him about this Falk affair. I took my drink, and Mr. Smith went one way and I went the other; and that was the only remark that was made about anything.

Q. Never had any other conversation with him? A. No, sir.

Q. Except on those two occasions which you detailed since this Legislature convened? A. No, sir; no other.

Q. Did you ever talk with him about any of these bills before this Legislature convened? A. No, sir.

Q. Or that were intended to be introduced? A. No, sir. For I had no right to do it, for I was not interested in those bills, as far as I was concerned.

MR. SMITH: Mr. Agnew, did you and I ever meet on the walkway of the Capitol way one morning? A. Never.

Q. Ever to talk? A. Not as I know of. I might have met you there, and just spoke to you, and said good day, or how do you do, or something like that.

Q. That was all the conversation, except the conversation at the Golden Eagle Hotel? A. Yes, sir.

Q. Was that the only thing that transpired between us? A. That was the only thing; yes. You were telling me about Higgins trying to put you in a hole in reference to Falk. That was the second conversation. That was the only time that I ever spoke to you in the Golden Eagle, for I never remember being in the Golden Eagle, or any place else, but what somebody was with me.

Q. What I am trying to get at, Mr. Agnew, is this: my recollection is, that while we were talking there, I said that the common talk was that bills were being shoved up and being shoved down, and omitted from the file. A. Yes, sir.

Q. Did I talk to you about anything like that? A. No; I never remember you saying such a word to me.

Q. You never said anything to me about it, did you? A. No, sir; because I did not know anything about it. I never knew anything about except just what I read in the paper.

Q. Well, did you ask me what the trouble was then—what Higgins was trying to shove me in the hole for? A. You told me the reason was it was something about Mr. Falk—that you caught Mr. Falk tampering with the files. And just about that time I says, "I don't know anything about it," and I walked away—I walked into the billiard room.

JOHN S. ENOS.

Sworn.

SENATOR MOFFITT: Mr. Enos, you are Labor Commissioner, are you not, or you were? Answer—Well, if you will let me go on and make a statement I will make a statement, or do you want to examine me?

Q. Well, I would like to have you go on and make a statement with relation to the note that Mr. Smith made and signed without your permission. A. Well, I could not make that statement without I gave a history of everything.

THE CHAIRMAN: Go on and make the statement, Mr. Enos, in your own language. A. I have known Mr. Smith for eleven or twelve years. I knew him in Messrs. Wheaton & Scrivner's law office, and also Judge Hoag, and between the two offices and mine, I became very intimately acquainted with Mr. Smith; and when I was elected to the Senate in 1879, we had a meeting of the Senators, and I was chosen Chairman of the San Francisco delegation. I desired Mr. Smith to be my confidential Secretary of that delegation. He was elected, and served with me three terms up here, in the Senate. I deem it proper that you should understand my relations with Mr. Smith. He served me in that capacity. My relations with him were intimate, with the exception of the time that he was in Oregon. I think it was two or three years that he was absent, and I lost sight of Mr. Smith. I assumed the duties of the office four years which I now hold. Mr. Smith returned from Oregon in straightened circumstances, and extremely poor, and at the solicitation of his mother and Mr. Smith and friends I helped Mr. Smith out of the contingent fund in my office to do

certain work there. Mr. Smith occupied in my office a very confidential relation; in fact, I trusted Mr. Smith with most everything.

MR. ELLSWORTH: You did trust him? A. I trusted him with everything. If I wanted anything done, I would say, "Mr. Smith, I want a report made of the seawall investigation, or of the cigar investigation, or any of these labor investigations that I have had." Mr. Smith has one fault, and I have endeavored to correct that fault; he has at times been unreliable as far as making his promises good, and Mr. Smith went on one occasion, when I was absent—he had had trouble with his family, and I let Mr. Smith stay in my office on my bed-lounge, or a lounge that could be used for that purpose—I knew his domestic troubles, and I says, "Mr. Smith, you can use my lounge here for your home," for I knew his domestic relations were unpleasant; I had myself seen his wife, and knew all about it. Mr. Smith, in my absence, in his straightened circumstances, took the liberty to use my name to get some money—I think it was five dollars—whether he got it or not I don't know. Mr. Smith came to me and told me what he had done. I chided him for it, and told him that it must never happen again, and I remember distinctly the feeling that he exhibited. I felt badly for him, and he cried upon that occasion and told me his extreme want of getting something to eat. I know nothing about this matter at all; I don't know anything more than what I have said about this matter. That is about the sum and substance of it; and as far as Mr. Smith being discharged from my office, he never was discharged, even to the last day that I eked out the appropriation for my contingent expenses and got him to make my last report. It is now in the hands of the State Printer. Mr. Smith rendered me services, and I think I paid him \$100 at one time, of which \$30 went to pay for money that was borrowed to send his wife down from Oregon.

Q. When was that, Mr. Enos? A. When was that, Mr. Smith?

MR. SMITH: That was money that was borrowed last June.

THE WITNESS: Yes, sir; before Mr. Smith came here to the Legislature, this session, he was in my office. Now, I want to be understood, that Mr. Smith has his faults.

MR. SMITH: Mr. Enos, before you go any further, I would like to ask you one question: These five dollars that I got from you I did not sign your name, it was an order that I drew on you; isn't that a fact? A. It was an order that he drew on me without my authority, of course. And Mr. Smith came himself, before I found it out, and spoke to me about it, and told me what he had done. I told him it was wrong, that he must never do so again, and he gave me as a reason his extreme want for getting something to eat.

MR. ELLSWORTH: When was that, Mr. Enos? A. I don't remember when it occurred. When was that, Mr. Smith?

MR. SMITH: Last May.

THE WITNESS: Yes, it was last May. Now, I want to say, in addition to this, that I understand that a letter has been introduced here that I wrote. Mr. Smith's mother came to me and told me how he was situated, and that he was despondent; that he would go into a state of absolute despondency, and would sit for days in a little room, and his mother expressed fears that he might commit upon himself injury—do away with himself—and she begged me to help him if I possibly could. I went to Mr. Holtz, the Assessor, with Mr. Smith personally, and tried to get him in there, and Holtz promised me that he would put him in. Mr. Smith came to me one day, crying, and said that he went out there at the time fixed, and was not wanted over there. He did not know what was going

to become of him. I sat down and wrote a beseeching letter to Mr. Holtz to give him employment. Now, Mr. Smith would say a good many things that he would not speak of if he took into consideration the circumstances, is a view I take of this. He says a good many things that he had not ought to say.

MR. ELLSWORTH: How soon, Mr. Enos, after Mr. Smith had drawn this order on you, was it before he told you of it? A. Well, I think I returned Tuesday, wasn't it Mr. Smith?

MR. SMITH: Yes, sir; I drew the order on Saturday; on Tuesday you returned.

THE WITNESS: Yes, I think it was, and the order was on Mr. Sheridan.

MR. SMITH: No, it was on Messrs. Ward & O'Brien.

THE WITNESS: Yes, sir; Ward & O'Brien; that was it.

MR. ELLSWORTH: And he told you upon your return? A. On Tuesday; I was either at Sacramento or at some place, and when I came home Mr. Smith told me what he had done. I says, "Never allow this thing to happen again;" says I, "I am your friend; I have stood by you through thick and thin." I understood his troubles and knew just how he was situated about his family affairs. I think the order was presented about three or four weeks afterwards; I do not remember about that. I charged my mind with nothing about it, and when I wrote this letter to Mr. Holtz it was after he came to me and was so despondent. I did for Mr. Smith the same as I would do for anybody, by giving him something to do under the circumstances.

MR. MOFFITT: Now, Mr. Enos, at any time since you have been Labor Commissioner have you ever had any deficiency bill at Sacramento, of any character, relating to your office, which you asked Mr. Smith to keep an eye open for you, to let you know its various stages? A. Two years ago I came to Sacramento, near the termination of the session, and the law creating the office only made provision for a portion of the time that I had to run it. I discovered that; my attention was called to it in the Controller's office. I went and consulted with Mr. Maslin, and Mr. Maslin drew up a bill to cover the deficiency from the eighth of March to the first of July, for \$1,615. I staid here until I got Mr. Cox to introduce it and present the facts to the Senate and have it put right on the Senate File, and I staid here until it got through the Senate. I went and spoke to Mr. Parks—Mr. Parks, I think—the Speaker, and Dr. May, and others; and I said this is a bill that is necessary to be passed, or else there will be no appropriation to continue the work of the office from the eighth of March till the first of July. And I said to Mr. Smith, I says, "I wish you would watch this bill." In the Senate it was put on the Special File; it was read the first time, and then put on the Special File for second reading; and I says, "Mr. Smith, when I go away I wish you would look out for the bill, and see that it is not neglected." I heard nothing from Mr. Smith nor anybody else, and I came up, and the bill, I think, was put on the Special File because it was an original bill. That is about the sum and substance of it. There is one thing more I want to say, in justice to all parties: So far as I am concerned, I came up here—of course I was not subpoenaed—to see about my report; and I did not expect to be subpoenaed. When I came up here I saw Mr. Smith, last night, and had a talk with him. I says to him, how do you mix Mr. Agnew up in this matter? Mr. Smith said they mixed him up in this way; this is the explanation he gave to me: he said that he was, I think, at the Golden Eagle Hotel, and there was a good many in there jesting and joking about shoving bills up and shoving them down, and that he understood Mr. Agnew to say, "Well, here I have got a

bill here, and if you will shove it up I will give you \$200;" something of that kind. I asked Mr. Smith what explanation he could make on that subject. I had no interest in it one way or the other, and that is the explanation that he made—that he understood Mr. Agnew to have said so.

Q. Was that right before a crowd of people in the Golden Eagle? A. I understood that this was the conversation, that they were jesting and joking there, and they had a drink there before several persons.

MR. MOFFITT: Mr. Enos, during that time or any time did Mr. Smith change a bill for you? A. No, sir; he never changed a bill in the world for me.

Q. Or at any other time? A. No, sir.

Q. He used your name for \$5. Did he at any other time use your name without any authority—without your authority? Did he write your name without your authority? Of course I understand that your office is a confidential office, and I do not wish to go into the details of the matter, because it might interfere with some of the affairs of your office; but I want to ask you if at any other time he ever signed your name without your authority? A. I understood that he did, and I asked him about it, and he denied it.

Q. You understood that he did? A. I understood that he did. But right on the spot he was informed of it, and he denied it; and I have no evidence.

Q. You never saw it? A. No.

Q. You never hunted up any evidence that he did or did not? A. I never found out that he did; he denied it at the time.

MR. SMITH: Mr. Enos, did you go to any one and inquire about that matter? A. I asked Mr. Cahill about it, and Mr. Cahill denied it. I followed it up, and Mr. Cahill denied it. And so did Smith deny it; and I never saw any evidence of it. I merely want to make this statement to you, gentlemen, to show you the confidential relations that existed between me and Smith.

MR. SMITH: I would like to ask you, Mr. Enos, a few questions myself. In your office, since you have been Labor Commissioner and during the last two years, you have had several investigations, have you not? A. Yes, sir.

Q. You have a deputy in your office? A. Yes, sir.

Q. O. A. Bernard? A. Yes, sir.

Q. The first investigation you had within the last two years was the inquiry into the boot and shoemakers? A. Yes, sir.

Q. The second investigation was an inquiry into the convict labor? A. Yes, sir.

Q. The third investigation was the investigation into the advisability of employing Chinese in vineyards and orchards? A. Yes, sir; that is, the Horticultural Society called upon me for a report.

Q. After that time, this \$5 transaction took place? A. Yes, sir.

Q. After that \$5 took place you had an investigation into the white labor stamp business, and after that you wrote a communication to the Governor? A. Yes, sir.

Q. About the convict labor? A. Yes, sir.

Q. After that you wrote your long biennial report to the Governor? A. Yes, sir; it was finished about last November.

Q. You also had an investigation upon the seawall matter? A. Yes, sir.

Q. For the purposes of the Senate? A. The Senate ordered me to make the investigation.

Q. In all these investigations, and in the proceedings had during the

investigation, who was your main assistant in all of them? A. You were my main assistant.

Q. Whom did you rely upon to do your work? A. I relied upon you to assist me after office hours. You spent, I think, thirty-one evenings, or portions of evenings after five o'clock, especially in making up the seawall report, which I authorized, and which I certified to you for the labor performed in that investigation for the bill that you have now presented, and also for Jesse Colon, who served all the subpoenas in the investigation.

Q. In regard to this order, I did not sign your name on that, but I drew an order on you and signed my own name to the order to pay \$5 and charge it to my account. Was there any money coming to me at the time I drew that order? A. I think there was a bill; I think there were bills sent up to the Board of Examiners which were allowed, and that one was sent up for you for \$100; I would not be positive, but I know you were occupying the relations which I have stated in that office, and know that I advanced money to you, and waited until after your bill was audited.

Q. And the largest portion was done after I drew that \$5 order on you? Especially on the penal report? A. On the penal report, I think; I do not remember the time I made my seawall report to the Governor.

Q. This is the first report you made, the twenty-fifth of February, 1886? A. I don't remember at all.

Q. Do you know of your own knowledge that I have ever signed your name on any person without your authority? Do you know of your own knowledge that I signed it without your authority? A. No, sir; I could swear positively to it.

E. J. SMITH.

Recalled.

MR. AGNEW: Mr. Smith, did you state that you made a mistake in regard to me? Answer—Just as Mr. Enos said, after that conversation we had down at the hotel that evening—that we had down there, and I am positive that you made the remark that I said you did make, but after thinking it over I came to the conclusion that it was a matter of jest; it was the common talk that night about shoving bills up and down on the file.

SENATOR MOFFITT: Well, after thinking over the matter, do you think it was a jest or a matter of business in my case? A. No, sir; a matter of business, I can prove it on you.

MR. AGNEW: You say that you think it was a matter of jest on my part? A. Yes, sir.

Q. Well, I should think you would have stated that to the committee? A. I did not think it was so serious. I do not think it is so serious now as I did the other night.

SACRAMENTO, February 25, 1887.

RUSSEL HEATH, Esq., *Chairman*:

SIR: At your request I have to-day, in company with Ed. J. Smith, Assistant Clerk, compared the files of the Assembly Bills since January twenty-fifth, for the purpose of seeing if Assembly Bill No. 16 had been wrongfully or surreptitiously changed in its place on the file. I am unable to see that it has been tampered with. Its file number, in common with all the other bills, has changed from day to day, but to the best of my knowledge and belief the relative position (relating to other bills) has not

been changed. I have not examined all of Mr. Moffitt's notes on the file, submitted by him, for the reason that his conclusion in regard to the changes he charges to have been made appear to rest solely on the fact that the file number of the bill in question varied from day to day.

Respectfully,

H. M. BARSTOW.

To test the matter more fully I followed a bill taken at haphazard in the same manner, finding only that bills varied in order, but not in date; that is, that any bills going on to the file together constantly kept their relative position. I wish to say I am not an expert at all, but believe fully that my conclusions are correct.

BARSTOW.